

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1900.

16

No. 989.

HENRY C. BERGHEIMER, APPELLANT,

vs.

LOUISE R. BERGHEIMER.

FILED APRIL 30, 1900.

AND

No. 990.

LOUISE R. BERGHEIMER, APPELLANT,

vs.

HENRY C. BERGHEIMER.

FILED MAY 2, 1900.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.



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Filed May 2, 1900.

Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } No. 20447. In Equity.

UNITED STATES OF AMERICA, { ss:
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Divorce.*

Filed May 11, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } In Equity. No. 20447.

The petition of Henry C. Bergheimer respectfully represents:
First. That he is a citizen of the United States and a resident of the District of Columbia and has continuously resided in this city and District for more than fifteen years last past.

Second. That the defendant, Louise R. Bergheimer, is a citizen of the United States and a resident of the city of Richmond, State of Virginia, where she has continuously resided for more than fifteen years last past.

Third. That upon the 2nd day of August, 1876, the petitioner and defendant were married in the city of Richmond, State of Virginia, at the residence of the father of defendant, by the Rev. Dr. Shafer, pastor of the Lutheran church, according to the rites of said church.

Fourth. That as the fruits of said marriage there have been born to the petitioner and defendant two children—Daniel P. Bergheimer, born July 4th, 1877, and Adelaide L. Bergheimer, born January —, 1880—both of whom are now living and reside in the city of Richmond, State of Virginia.

Fifth. That subsequent to the said marriage and for a period of about three years the petitioner and defendant lived together as husband and wife in the city of Richmond, State of Virginia,

2 and during said time the petitioner was engaged in the jewelry business in said city; that in the year 1879 the petitioner, having failed in business, he and the defendant went to Farmville, Virginia, to reside, where they remained for a period of about three months; that the petitioner, not having any employment or business in said last-named place, but desiring to procure employment, so that he might support and maintain his wife, the defendant, and his child, then, through an understanding and agreement with the said defendant, this petitioner went to Baltimore, Maryland, to seek employment, and the defendant returned to Richmond, Virginia, there to remain with her parents, as was so mutually understood and agreed between them, the petitioner and defendant, until the petitioner obtained employment in Baltimore, Maryland, or elsewhere to support his wife and child, when, as was agreed between them, the defendant would, on being notified by him, return to and live with the petitioner; that petitioner went to said Baltimore, where he remained some two months without procuring work; that from said city the petitioner sent to Annapolis, Maryland, and at said latter city he procured work and employment at his trade as a watch-maker, and thereupon, according to his said arrangement and understanding with the said petitioner, the petitioner sent for his wife, the defendant, and child to come to Annapolis, as the petitioner was prepared to and would support and maintain them, but the said defendant wrote to the petitioner refusing to come to said Annapolis, as had been agreed upon, saying that she would not leave said city of Richmond; that the petitioner then went to said

3 Richmond to see the defendant for the purpose of inducing her to accompany him with their child to Annapolis, there to live as husband and wife, and although the petitioner went to the residence of the defendant and asked to see her, the said defendant refused to see him or have any conversation with him, and the petitioner then returned to said Annapolis, where he continued to be employed for a period of two years, when, losing his employment, he came to Washington, D. C., where he has, since 1881, continuously resided and been employed.

The petitioner further says that the defendant, though frequently advised and informed of his residence in said cities of Annapolis

and Washington and his places of employment, never offered to return to petitioner and live with him, as petitioner requested her to do, as husband and wife; and petitioner further says that the defendant has frequently, as petitioner is informed and believes, visited the city of Washington during petitioner's employment here, and at times remained some days, but has never visited or offered to visit or see him at his said place of employment, although the said defendant knew the same; that since the petitioner and defendant lived in said Farmville, Virginia, as hereinbefore set forth, they have never lived or resided together as man and wife or otherwise.

Sixth. The petitioner says that the defendant willfully deserted and abandoned him for the full, uninterrupted space of two years, to wit, for the full, uninterrupted, continuous space of more than eighteen years last past.

The premises considered, the petitioner prays:

1. That process may issue in due form, directed to the defendant, commanding and directing her to appear by a day named
4 to answer the exigency of this petition.
2. That all proper orders and references may be made by the court as may be necessary to accomplish the object and ends sought by the petitioner.
3. That a divorce from the bond of marriage with the defendant be granted to the petitioner.
4. That he may have such further and other relief in the premises as the nature of the case may require.

The defendant to this petition is Louise R. Bergheimer.

HENRY C. BERGHEIMER.

PADGETT AND FORREST,
Solicitors for Petitioner.

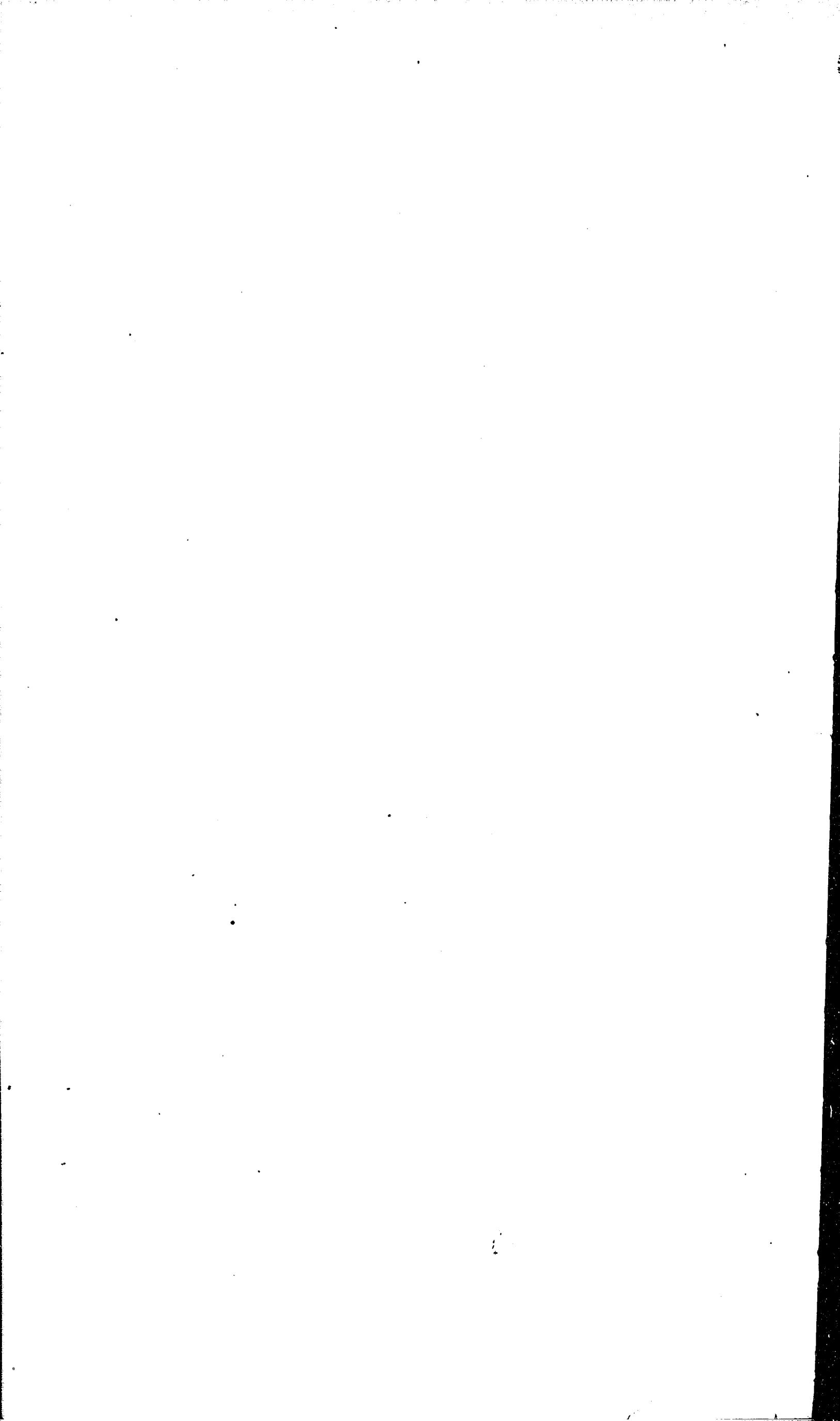
Henry C. Bergheimer, being first duly sworn according to law, deposes and says that he is the petitioner and has read over the above petition by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true, and the facts therein stated on information and belief he believes to be true.

HENRY C. BERGHEIMER.

Subscribed and sworn to before me this 11th day of May, 1899.

[SEAL.]

GUY E. PADGETT,
Notary Public, D. C.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1900.

No. 989.

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Filed May 2, 1900.

a

Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. } No. 20447. In Equity.
LOUISE R. BERGHEIMER. }

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Divorce.*

Filed May 11, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. } In Equity. No. 20447.
LOUISE R. BERGHEIMER. }

The petition of Henry C. Bergheimer respectfully represents:
First. That he is a citizen of the United States and a resident of the District of Columbia and has continuously resided in this city and District for more than fifteen years last past.

Second. That the defendant, Louise R. Bergheimer, is a citizen of the United States and a resident of the city of Richmond, State of Virginia, where she has continuously resided for more than fifteen years last past.

Third. That upon the 2nd day of August, 1876, the petitioner and defendant were married in the city of Richmond, State of Virginia, at the residence of the father of defendant, by the Rev. Dr. Shafer, pastor of the Lutheran church, according to the rites of said church.

Fourth. That as the fruits of said marriage there have been born to the petitioner and defendant two children—Daniel P. Bergheimer, born July 4th, 1877, and Adelaide L. Bergheimer, born January —, 1880—both of whom are now living and reside in the city of Richmond, State of Virginia.

Fifth. That subsequent to the said marriage and for a period of about three years the petitioner and defendant lived together as husband and wife in the city of Richmond, State of Virginia,

2 and during said time the petitioner was engaged in the jewelry business in said city; that in the year 1879 the petitioner, having failed in business, he and the defendant went to Farmville, Virginia, to reside, where they remained for a period of about three months; that the petitioner, not having any employment or business in said last-named place, but desiring to procure employment, so that he might support and maintain his wife, the defendant, and his child, then, through an understanding and agreement with the said defendant, this petitioner went to Baltimore, Maryland, to seek employment, and the defendant returned to Richmond, Virginia, there to remain with her parents, as was so mutually understood and agreed between them, the petitioner and defendant, until the petitioner obtained employment in Baltimore, Maryland, or elsewhere to support his wife and child, when, as was agreed between them, the defendant would, on being notified by him, return to and live with the petitioner; that petitioner went to said Baltimore, where he remained some two months without procuring work; that from said city the petitioner sent to Annapolis, Maryland, and at said latter city he procured work and employment at his trade as a watch-maker, and thereupon, according to his said arrangement and understanding with the said petitioner, the petitioner sent for his wife, the defendant, and child to come to Annapolis, as the petitioner was prepared to and would support and maintain them, but the said defendant wrote to the petitioner refusing to come to said Annapolis, as had been agreed upon, saying that she would not leave said city of Richmond; that the petitioner then went to said

3 Richmond to see the defendant for the purpose of inducing her to accompany him with their child to Annapolis, there to live as husband and wife, and although the petitioner went to the residence of the defendant and asked to see her, the said defendant refused to see him or have any conversation with him, and the petitioner then returned to said Annapolis, where he continued to be employed for a period of two years, when, losing his employment, he came to Washington, D. C., where he has, since 1881, continuously resided and been employed.

The petitioner further says that the defendant, though frequently advised and informed of his residence in said cities of Annapolis

and Washington and his places of employment, never offered to return to petitioner and live with him, as petitioner requested her to do, as husband and wife; and petitioner further says that the defendant has frequently, as petitioner is informed and believes, visited the city of Washington during petitioner's employment here, and at times remained some days, but has never visited or offered to visit or see him at his said place of employment, although the said defendant knew the same; that since the petitioner and defendant lived in said Farmville, Virginia, as hereinbefore set forth, they have never lived or resided together as man and wife or otherwise.

Sixth. The petitioner says that the defendant willfully deserted and abandoned him for the full, uninterrupted space of two years, to wit, for the full, uninterrupted, continuous space of more than eighteen years last past.

The premises considered, the petitioner prays:

1. That process may issue in due form, directed to the defendant, commanding and directing her to appear by a day named
4 to answer the exigency of this petition.
2. That all proper orders and references may be made by the court as may be necessary to accomplish the object and ends sought by the petitioner.
3. That a divorce from the bond of marriage with the defendant be granted to the petitioner.
4. That he may have such further and other relief in the premises as the nature of the case may require.

The defendant to this petition is Louise R. Bergheimer.

HENRY C. BERGHEIMER.

PADGETT AND FORREST,
Solicitors for Petitioner.

Henry C. Bergheimer, being first duly sworn according to law, deposes and says that he is the petitioner and has read over the above petition by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true, and the facts therein stated on information and belief he believes to be true.

HENRY C. BERGHEIMER.

Subscribed and sworn to before me this 11th day of May, 1899.

GUY E. PADGETT,
[SEAL.] *Notary Public, D. C.*

Filed Jun- 28, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER } vs. Louise R. BERGHEIMER. } Equity. No. 20447, Docket 46.

Answer of the respondent, Louise R. Bergheimer, to the petition
herein filed.

For answer to the petition filed in the above-styled cause, the respondent, Louise R. Bergheimer, states as follows:

(1, 2, 3.) She admits the allegations contained in the first, second, and third paragraphs of the bill.

(4.) She admits the allegations of the fourth paragraph of the bill, except as to the date of the birth of Adelaide L. Bergheimer, who was born in the year 1879 instead of 1880, as stated in the bill.

(5.) She denies the allegations of the fifth paragraph of the bill ; and, more particularly answering said paragraph, she particularly denies that the petitioner ever wrote to her, after leaving her at Farmville, Virginia, in 1879, that he was prepared to and would support her and her child, and she says it is not true that she ever wrote to the petitioner refusing to come to Annapolis, as alleged ; and it is not true that she ever wrote to him saying that she would not leave the city of Richmond ; she denies that the petitioner ever came to Richmond to see her for the purpose of inducing her to accompany him to Annapolis, and avers that if he ever had

6 any such purpose he did not communicate the same to her; she denies that she ever refused to see the petitioner or have any conversation with him, as alleged in said paragraph of the bill.

Further answering the allegations of said paragraph of the bill, the respondent says that the facts with reference to the transactions therein referred to are as follows: The petitioner became dissipated and careless soon after marriage; was addicted to gambling; stayed out frequently all night, and thereby ruined his business, resulting in the failure alleged in the bill; that he would pawn his own property and the property of customers left with him to be repaired; that he left the respondent in Richmond and went to Farmville, Virginia, and she followed him to that place, but he continued the same course of life, and in a very short time left respondent there without any means of support, and she had to sell her furniture to get bread and pay her way to her father's home in the city of Richmond, Virginia. Petitioner did write to her to come to Annapolis, Maryland, but sent her no money to come with, and she was without means to get to him, and she had then two children,

the elder two and a half years old, and the younger an infant of a few months. The only time respondent has ever seen the petitioner since he left her in Farmville with her infant child and utterly without means of support was about ten years ago, when he walked into the dry-goods store of Breeden & Talley, in Richmond, Virginia, where the respondent was then employed as a saleswoman, and was much surprised to see her there; that he stayed but a moment and started for the door, when she begged him for an interview; but he refused, saying he had to

get to his train for Washington. He has never requested

7 her to return and live with him, except as above stated, and has never provided the means nor afforded the opportunity for her to do so, and though he is now and for a long time past has been in receipt of an ample salary, which is at the present time, as respondent is informed and believes, at least one hundred and fifty dollars a month, he has never contributed or offered to contribute a single cent towards her support since he deserted her at Farmville, Virginia, twenty years ago, and the respondent is now without property or income of her own and without means of support except the fruits of her own labor, and is without means to pay the necessary expense of the defence of this suit. Respondent has written petitioner a number of times and on several occasions has been to Washington and sent notes to him, requesting an interview, but he never answered or appeared where requested to meet her. He did call once at the house of respondent's mother, about nineteen years ago, where respondent then was sick in bed, and on that occasion saw the children, but expressed no desire to see her. His son, Daniel, has often visited him, and, as this respondent is informed and believes, urged him to arrange to bring his wife and children to live with him, but he always refused, saying he was not in position to give the subject an honorable consideration. He has occasionally given his son a little money, not exceeding one hundred dollars in all, and that is the extent of his contribution to the support of the family during the past twenty years, and the said son has frequently written his father asking for help, but in vain. His daughter has also often visited him, going at least once a year for six or seven

years, and when she last visited his home a woman who lived

8 with him refused to let her see him, but the daughter persisted, and the petitioner himself came down and pushed her out of doors, ordered the woman to shut the door, and dared his daughter to ever put her foot in the house again, telling her to tell her mother and all the rest that he didn't care a — for any of the family, and they must never bother him again.

(6.) Answering the sixth paragraph of the bill, she denies that she willfully deserted and abandoned the petitioner for the space of two years or for any other period, or that she ever deserted him at all, but, on the contrary, avers that he deserted and abandoned her, and she has for a long time past been entitled to apply for a divorce from him, but has refrained from doing so from conscientious reasons more than any other.

And now, having fully answered, respondent prays the court to award her a suitable amount for alimony pending this litigation and such amount as to the court may seem proper as a fee to her solicitors and for the expenses of defending this suit, and that she be hence dismissed with her reasonable costs in this behalf incurred.

MRS. L. R. BERGHEIMER.

MILLAN & SMITH,
Sols. for Respondent.

COMMONWEALTH OF VIRGINIA, }
City of Richmond, } ss:

Louise R. Bergheimer, being first duly sworn according to law, upon her oath says that she has read the foregoing answer by her subscribed and knows the contents thereof; that the facts therein stated of her own knowledge are true, those stated on information and belief she believes to be true.

LOUISE R. BERGHEIMER.
MRS. L. R. BERGHEIMER.

Subscribed and sworn to before me this 8th day of June, A. D. 1899.

[SEAL.]

DANIEL GRINNAN,
Notary Public.

Replication.

Filed Jul- 5, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. } Equity. No. 20447.
LOUISE R. BERGHEIMER. }

The complainant hereby joins issue with the defendant on her answer herein filed.

PADGETT AND FORREST,
Solicitors for Complainant.

10 Order for Alimony Pendente Lite.

Filed Sep. 13, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. } Equity. No. 20447, Docket 46.
LOUISE R. BERGHEIMER. }

Upon consideration of the motion of the respondent for alimony *pendente lite*, filed August 7, 1899, it is, this 13th day of September, 1899, ordered that the complainant be, and he hereby is, ordered to pay to the respondent the sum of thirty dollars per month, said

amount to be paid in two equal installments on the first and fifteenth days of each month, the first installment of fifteen dollars to be paid on the fifteenth day of September, 1899, said payments to continue during the pendency of the suit or until further order of the court.

CHAS. C. COLE,
Asso. Justice.

11

Cross-bill for Divorce and Alimony.

Filed Nov. 14, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs.
LOUISE R. BERGHEIMER }
and }
LOUISE R. BERGHEIMER }
vs.
HENRY C. BERGHEIMER }

Equity. No. 20447, Docket 46.

The cross-bill of Louise R. Bergheimer in the above-entitled cause respectfully shows to the court:

(1.) That she is a citizen of the United States and a resident of the city of Richmond, in the State of Virginia, and that she is the respondent in the original petition filed by Henry C. Bergheimer in the above-styled cause.

(2.) That the said Henry C. Bergheimer, respondent in this cross-bill, is a resident of the District of Columbia and a citizen of the United States.

(3.) That she and the said cross-defendant were lawfully united in marriage in the city of Richmond, in the State of Virginia, on the 2nd day of August, A. D. 1876, by the Reverend Dr. Shafer, a minister of the gospel of the Lutheran church.

(4.) That the said cross-defendant and your petitioner in this cross-petition lived together in the relation of husband and wife for a period of about three years, the said cross-defendant being during that time engaged in the jewelry business in the aforesaid city; that towards the end of said period he failed in business, and thereupon removed from Richmond

12 to Farmville, in Virginia, and after remaining there

for a short time he willfully deserted and abandoned your cross-petitioner, who had gone thither to join him, leaving her at said last-mentioned place upon the pretence that he would go and seek employment and provide a place for her and send for her to join him, but which he has never done, nor has he at any time since the said desertion and abandonment, now more than twenty years ago, ever contributed anything to the support of your peti-

tioner herein, although he is now and for a number of years past has been in receipt of an ample salary, making him abundantly able to do so; that he holds a responsible position in the employ of the jewelry firm of Messrs. Galt and Brother, in the city of Washington, D. C., and according to the best of the knowledge, information, and belief of this petitioner is at present in receipt of a salary of not less than one hundred and fifty dollars (\$150) per month; that he has not contributed anything to the support of his two children born of said marriage, one of whom, a son, Daniel P. Bergheimer, was of the age of two years at the date of said desertion, and the other of whom is a daughter, Adelaide L. Bergheimer, and who was born after the separation actually took place, except that he has occasionally given his said son small sums of money, amounting to not more than one hundred dollars, in all the twenty years, according to the best of this petitioner's knowledge, information, and belief, but the responsibility and expense of maintaining them until the said son became old enough to earn something for himself has rested solely upon this petitioner; that the aforesaid desertion and abandonment has continued uninterruptedly for the full space of more than two years, to wit, for the full, -interrupted period of more than twenty year last past and still continues.

13 (5.) That this petitioner has heretofore filed her answer to the original petition, denying all of the facts upon which the original petitioner relies for relief, and here reaffirms the denials made in her said answer.

(6.) That this petitioner is without means of support, except from her own earnings; that she is employed as a saleswoman by a dry-goods firm in said city of Richmond, and earns, when able to work, the sum of six dollars per week, but owing to her state of health, produced by an injury received some years ago, is unable to work a considerable portion of the time.

Premises considered, your cross-petitioner prays:

(1.) That process issue against the defendant in this cross-petition, Henry C. Bergheimer, requiring him to appear and answer the exigencies of the same.

(2.) That the defendant in this cross-petition be required to pay her a suitable amount for her support and maintenance during the pendency of this suit, together with such allowance as may to the court seem reasonable, as expenses of carrying on the same, and as a fee to her solicitors, and on final hearing that she be awarded a decree against him for permanent alimony in such sum as to the court may seem reasonable and fair.

(3.) That she be granted an absolute divorce from the bonds of matrimony subsisting between her and the defendant in this petition.

(4.) That she have such other and further relief as the equities of the case may demand.

MRS. LOUISE R. BERGHEIMER,
Cross-petitioner.

MILLAN & SMITH,
Sols. for Cross-petitioner.

14 STATE OF VIRGINIA, }
 City of Richmond, } ss:

Louise R. Bergheimer, petitioner in the foregoing cross-petition, being duly sworn, makes oath as follows: I have read the foregoing cross-petition by me subscribed and know the contents thereof, and the matters and things therein stated as of personal knowledge are true, those stated as upon information and belief I believe to be true.

MRS. LOUISE R. BERGHEIMER.

Subscribed and sworn to before me this 4th day of November, A. D. 1899.

[SEAL.] A. B. DICKINSON,
 Notary Public for the City of Richmond, Va.

Motion to Suppress Deposition of Petitioner.

Filed Nov. 14, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER	vs.	Equity. No. 20447, Docket 46.
LOUISE R. BERGHEIMER	and	
LOUISE R. BERGHEIMER	vs.	
HENRY C. BERGHEIMER		

Now comes the defendant, Louise R. Bergheimer, by her
 15 solicitors, and moves the court to suppress and strike out the deposition of the petitioner, Henry C. Bergheimer, taken in support of his petition in this cause, on the ground that he is incompetent to testify herein.

MILLIAN & SMITH,
 Solicitors for Defendant.

Please take notice that we will call up the above motion before his honor Mr. Justice Hagner in equity court No. 1, on Friday, November 17, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

MILLIAN & SMITH,
 Solicitors for Defendant.

To Messrs. Padgett & Forrest, solicitors for complainant.

Service of copy of the above motion is hereby acknowledged this 14th day of November, 1899.

EDWIN FORREST,
 Solicitor for Complainant.

16 *Motion to Strike Out Cross-bill.*

Filed Nov. 22, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } In Eq. No. 20447.

And now comes the complainant, by his solicitors, and moves the court to strike from the files the cross-bill filed herein by the defendant because the same was filed without leave of the court first had and obtained.

PADGETT AND FORREST,
Solicitors for Complainant.

Nov. 16th, 1899.

Messrs. Millan & Smith, solicitors for defendant.

GENTLEMEN: Take notice that we will call up the above motion before Mr. Justice Barnard on Monday next, November 20th, 1899, at the opening of the court on said day or as soon thereafter as counsel can be heard.

PADGETT AND FORREST,
Solicitors for Complainant.

Service accepted by receipt of copy this — day of November 1899.

_____,
Solicitors for Defendant and Petitioner in Cross-bill.

Served copy on Mr. Millan Nov. 16, 1899.

E. FORREST,
Of Counsel for Compl't.

17 *Stipulation of Counsel as to Testimony.*

Filed Nov. 24, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } In Equity. No. 20447.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that all testimony taken by the defendant in chief in this cause may be used by her, either in support of her answer or cross-bill, subject, however, to all legal objections as to competency, admissibility, relevancy, and materiality, and that all testimony taken by the complainant in reply thereto may be used by him, either in rebuttal of defendant's testimony in support of her

answer or in support of his defense to the cross-bill, subject to all legal objections as aforesaid ; and, further, that, so far as competent, relevant, or material, the testimony taken by complainant in support of his petition may be used by him in defense to the cross-bill, should the defendant be required to make answer thereto ; and it is further expressly stipulated, agreed, and understood that in making this stipulation the complainant and his solicitors do not waive any legal objections that may be taken or insisted upon by him or them as to the legal right of the defendant to file and maintain the cross-bill heretofore filed herein under the circumstances in said cross-bill stated for the causes therein set forth and for reasons appearing upon the face of the record.

PADGETT AND FORREST,
Solicitors for Complainant.
 MILLAN & SMITH,
Solicitors for Defendant.

18

Notice to Produce Letters.

Filed Nov. 24, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
 vs. } In Equity. No. 20447.
 LOUISE R. BERGHEIMER. }

Messrs. Millan & Smith, solicitors for defendant.

GENTLEMEN: Please take notice that you are hereby required to produce at the taking of testimony on behalf of the defendant herein, in the city of Richmond, State of Virginia, on Saturday, November 25th, 1899, at the hour of 10 o'clock a. m., or as soon thereafter as testimony shall be taken, any and all letters received by the said defendant from the complainant herein while the said complainant was residing in the city of Washington, D. C., or in the city of Annapolis, State of Maryland, or in the city of Baltimore, in the latter State, and particularly such letters as were sent to the said defendant to her residence in the city of Richmond, State of Virginia, by the complainant in the years, to wit, 1878, 1879, 1880, and 1881, and particularly such letters aforesaid, during the years aforesaid, touching requests of the said complainant of the defendant to come and live with him in the city of Annapolis, State of Maryland ; & in the absence of such letters secondary evidence will be submitted to the court as to the contents of the same ; this notice not in anywise to be considered as a waiver or withdrawal of the notice heretofore given during the taking of testimony
 19 on behalf of the complainant herein.

PADGETT AND FORREST,
Solicitors for Complainant.

Nov. 24th, 1899.

Service accepted by receipt of copy.

MILLAN & SMITH.

Plea of Henry C. Bergheimer to Cross-bill.

Filed Nov. 25, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
 vs. } Equity. No. 20447. Petition for Divorce.
 LOUISE R. BERGHEIMER. }

The plea of Henry C. Bergheimer, defendant (who appears specially to deny the jurisdiction of this honorable court in the premises to receive, entertain, or permit the defendant to file and prosecute her alleged cross-bill), to the cross-bill of Louise R. Bergheimer.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said cross-bill set forth and alleged to be true in manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said cross-bill says:

First. That the petitioner is not, and was not at the date of filing her petition, a resident of the District of Columbia, nor has 20 she since been a resident of said District, and that she has

not resided within the said District for two years next preceding her application for divorce; that the petitioner, before her marriage with this defendant and at the date of said marriage, was a resident of the city of Richmond, State of Virginia, and domiciled in said city and State; that she willfully deserted and abandoned this defendant in the alleged cross-bill outside of this jurisdiction and has continuously resided in said State as well as long before as ever since her marriage to this defendant to the alleged cross-bill.

Second. That the facts set forth in said alleged cross-bill of the said Louise R. Bergheimer are the same identical facts set forth in her answer to the complainant's original bill of complaint for divorce as a defense thereto, and the said Louise R. Bergheimer in and by her said cross-bill sets up said facts and urges the same for the purpose and with the object of obtaining the opposite of the relief sought by the complainant in and by his said original bill of complaint.

Which facts this defendant avers to be true, and he pleads the same in bar of the petition and prays the judgment of this honorable court whether it has jurisdiction in the premises, and whether he should be compelled to make other or further answer; and he prays to be hence dismissed, and that the court dismiss said petition.

HENRY C. BERGHEIMER,
 By his attorneys, PADGETT AND FORREST.

HENRY C. BERGHEIMER.

21 I certify that in my opinion this plea is well founded in law.

EDWIN FORREST,
 Counsel for Defendant.

I do solemnly swear that I have read the plea by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true. I further solemnly swear that the above plea is true in fact, and that it is not interposed for delay.

HENRY C. BERGHEIMER.

Subscribed and sworn to before me this 24 day of November, A. D. 1899.

[SEAL.]

GUY E. PADGETT,
Notary Public, D. C.

Motion to Suppress Deposition of Defendant.

Filed Jan. 5, 1900.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. } In Equity. No. 20447.
LOUISE R. BERGHEIMER. }

And now comes the complainant, by his solicitors, Messrs. Padgett & Forrest, and moves the court to suppress the deposition of the defendant herein, for the reason that, as shown by the record and testimony herein, she is the wife of the complainant, and therefore an incompetent witness to testify in this proceeding, which objection as to competency was made at the time of the taking of her deposition.

PADGETT AND FORREST,
Solicitors for Complainant.

January 4th, 1900.

Messrs. Millan & Smith, solicitors for defendant.

GENTLEMEN: Please take notice that I will at the hearing of this cause call up the above motion for disposition by the justice presiding.

Very respectfully, PADGETT AND FORREST,
Solicitors for Complainant.

Stipulation Between Counsel that Proof as to Petitioner's Faculties May be Taken if the Court Grants Permanent Alimony.

Filed Jan. 11, 1900.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. } Equity. No. 20447, Docket 46.
LOUISE R. BERGHEIMER. }

It is stipulated and agreed by and between the solicitors for both of the parties to this cause that if the court on final hearing

23 shall be of opinion that the respondent and cross-petitioner is entitled to permanent alimony, that proof may be taken as to the faculties of the complainant, if counsel cannot agree as to the same, if the court shall consider that the further evidence on this point is necessary in order to fix the amount of such alimony.

PADGETT AND FORREST,
Solicitors for Complainant.

MILLAN & SMITH,
Solicitors for Defendant.

Decree.

Filed Mar. 30, 1900.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
vs. } No. 20447. Equity.
LOUISE R. BERGHEIMER, Defendant. }

This cause coming on to be heard upon the bill and answer and the cross-bill and answer, and the testimony and other proceedings, and being heard, argued by counsel, submitted to and considered by the court, it is this 30th day of March, 1900, adjudged, ordered, and decreed that the depositions of the complainant and the defendant be, and they are hereby, suppressed, because of the opinion that the husband and wife are not competent witnesses for or against each other in a suit for divorce, and that the bill herein and 24 the cross-bill be, and they are hereby, both dismissed, and that the complainant, Henry C. Bergheimer, pay the costs of this suit.

JOB BARNARD, *Justice.*

Opinion of Mr. Justice Barnard.

Filed Mar. 30, 1900.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
vs. } Number 20447. Equity.
LOUISE R. BERGHEIMER, Defendant. }

In this case the complainant has filed a bill for divorce from the bond of marriage with the defendant, in which he alleges that the parties were married on August 2, 1876, in Richmond, Virginia; that they lived together as husband and wife in Richmond for two or three years, when they removed to Farmville, Virginia, and after residing there only a short time the complainant, having failed in business, left his wife and one child and sought employment elsewhere. The defendant returned to Richmond after his departure and lived with her father and mother.

The complainant succeeded in getting employment in Annapolis,

25 Maryland, and, some time in 1879, notified his wife that he had obtained employment and had secured a room and was able to take care of her and the two children, another child having been born after her return to her father's house.

The bill avers that the complainant left his wife at Fairville by agreement and understanding between himself and wife, but the evidence tends to show that he left because he anticipated legal proceedings against him growing out of his failure in business.

The court will not undertake to state which of these theories is the correct one, for the complainant does not claim any right to a divorce based upon anything that occurred prior to his effort to induce his wife to join him in the new domicile which he claims to have established in Annapolis.

The evidence is not so satisfactory as to fully convince the mind of the court that actual provision was made for his wife, and such as under all the circumstances she was bound to accept. Some of the evidence is hardly competent, and some of it is rather indefinite and vague, and the time that has elapsed since his effort was made tends to obscure the situation so much as to leave the matter in some doubt. The strongest piece of evidence, perhaps, is that of a letter written by the defendant to the complainant, dated at Richmond, March 11, 1879, in which the defendant admits the receipt of a letter or letters from the complainant upon the subject of her going to join him, and says:

26 "Now, Henry, I have told you, over and again, that I would never leave R., and you need not ask me to go, and you need not demand me, for I am my own counsel, and do you think you are doing a husband's duty? No; not by far."

There are other expressions in the letter that indicate that she was perfectly willing to live with the complainant, provided that he would return to Richmond and live there.

At the hearing of the cause my first impression was that the complainant had proven desertion mainly from the statements contained in this letter; but, on further consideration, I am not satisfied that sufficient proof has been presented to entitle the complainant at this late date to a divorce on this ground.

The complainant seems to have acquiesced in the determination expressed by his wife in this letter, and to have made no further effort from that day to this for a reconciliation, and no effort to support his wife and the children of the marriage, and has apparently lived very much as if he had never known the defendant or their children.

There is some evidence which tends to show that the wife and children would have been glad of a reconciliation, but the complainant did not encourage any such feeling, and did not institute his suit for divorce until May 11, 1899, which happens to be twenty years and two months from the date of this letter filed in the testimony.

While there is no statute of limitations in this District which would bar the bringing of a suit for divorce, I am inclined to the

opinion that good faith demands that a suit should be brought within such time as will enable both parties to have an opportunity of making the proof of facts which may be deemed important to them, without having to rely upon witnesses whose memories cannot be clear, and who cannot be expected to state with distinctness facts which occurred twenty years before. If the defendant had wrongfully refused to go with him to the new domicile which he had properly and fairly established, and had persisted in such refusal for a period of two years, under our statute it would have been cause for a divorce, and after that period he was not obliged to receive her if she had offered to go to her husband; but if he delays for eighteen or twenty years to bring suit for that cause, and in the meantime there is evidence tending to show that she would have been willing to join him, I think that it is an additional reason for requiring him to make out a clear case, and that it imposes upon him greater burdens in the way of proof than if he had brought a suit within a reasonable time after the alleged cause had occurred.

On the whole case, therefore, without going into detail in the testimony further, I am of the opinion that the complainant's bill should be dismissed.

The defendant on the 14th day of November, 1899, filed a cross-bill in this cause, asking for an absolute divorce from her husband, in which she avers that she is a resident of Richmond, Virginia, and that she is entitled to a decree for divorce because of the desertion of her husband while they lived at Farmville, Virginia, the date of which desertion is not definitely stated, but from the evidence it must have been in 1878 or 1879.

Testimony was taken in Richmond, Virginia, under this cross-bill, as well in defense of the original bill, but it will not be necessary to refer to the same further than to state that there may be some doubt as to whether the husband did desert the wife at Farmville or whether it was a separation of the parties by mutual agreement.

The view that I take of the law makes this unnecessary under section 740 of the Revised Statutes of this District; that section reads as follows:

"No divorce shall be granted for any cause which shall have occurred out of the District, unless the party applying for the same shall have resided within the District for two years next preceding the application."

The cause of the divorce alleged in the cross-bill having occurred in Virginia, and the complainant in the cross-bill asking a divorce, being a resident of Virginia and never having resided in the District of Columbia, is, in my opinion, precluded from demanding a divorce in the courts of this District, whether it be by way of cross-bill or original bill.

I have been referred to cases holding a contrary doctrine, but I think that the case of *Valk v. Valk*, 18 R. I., 639, contains the better reasoning, if decided cases are necessary to aid the court in

construing a statute apparently so plain as the one just quoted. The cross-bill will be dismissed on the ground of want of jurisdiction, as well as on the failure of the proof to make out a satisfactory case.

The parties in this cause took the testimony of the complainant and the defendant, and offered to read the same at the hearing; and in support of the offer they claim that the parties in a divorce suit are competent witnesses, and cite in support of such claim the case of the Traction Company *vs.* Lusby, 12th Appeals D. C., 295, wherein the Court of Appeals held that in an action by a husband and wife to recover damages for injuries to the wife caused by the negligence of the defendant the wife is a competent witness under section 876, R. S. D. C.

The several judges of this court have had frequent occasion to pass upon the question of the admissibility of the testimony of the parties in divorce suits in the last twenty years, and my information is that so far they have held uniformly that such testimony is incompetent, and they rely upon the authority of the case of Burdette *vs.* Burdette, reported in 2 Mack., 469. In that case the court in general term construed the statute upon the subject and held that in divorce cases neither party was competent or compellable to give evidence for or against the other. In this decision they referred to section 737 of the R. S. D. C., as well as to other authorities.

The testimony therefore of the complainant and defendant in this case was excluded. The decree will be that the bill and cross-bill both be dismissed and the complainant pay the costs of this suit.

JOB BARNARD, *Justice.*

30

Appeal of Complainant.

Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
 vs. }
 LOUISE R. BERGHEIMER. } Equity. #20447.

Appeal, as ordered, entered 1900, 4, 11.

By CL'K.

APRIL 11, 1900.

And now comes the complainant and enters this his appeal to the Court of Appeals of the District of Columbia from the decree made herein on March 30, 1900, and the clerk is requested to enter this appeal and issue citation to the defendant.

PADGETT AND FORREST,
For Complainant.

18 HENRY C. BERGHEIMER VS. LOUISE R. BERGHEIMER AND

31 In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } No. 20447. In Equity.

The President of the United States to Louise R. Bergheimer,
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 11th day of April, 1900, wherein Henry C. Bergheimer is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 11th day of April, in the year of our Lord one thousand nine hundred (1900).

JOHN R. YOUNG, Clerk.

Service of the above citation accepted this 14 day of April, 1900.

MILLAN & SMITH,
Attorney- for Appellee.

32 *Appeal of Defendant.*

Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } Equity. # 20447.

Appeal, as ordered, entered 1900, 4, 16.

By CL'K.

And now comes the respondent and enters this her appeal to the Court of Appeals of the District of Columbia from so much of the decree herein entered on the 30th day of March, A. D. 1900, as dismisses her cross-bill and suppresses her deposition taken in support thereof, and the clerk is requested to enter this appeal and issue citation to the complainant.

MILLAN & SMITH,
For Respondent.

April 16, 1900.

33 *Memorandum.*

April 19, 1900.—Complainant's bond on appeal filed.

Waiver of Citation.

Filed Apr. 19, 1900.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } Equity. No. 20447, Docket 46.

The complainant, by his solicitors, acknowledges notice that the respondent has, this 16th day of April, A. D. 1900, entered an appeal to the Court of Appeals of the District of Columbia from so much of the decree herein passed on the 30th day of March, A. D. 1900, as dismisses her cross-bill and suppresses her deposition taken in support thereof, and hereby waives issuance and service of citation on said appeal.

PADGETT AND FORREST,
Solicitors for Complainant.

34

Memorandum.

April 21, 1900.—Defendant's bond on appeal filed without surety.

Directions to Clerk for Preparation of Record on Appeal.

Filed Apr. 23, 1900.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } In Eq. No. 20447.

To the clerk of the supreme court of the District of Columbia:

In making the transcript of record in this cause to be transmitted to the Court of Appeals on the petitioner's appeal, you will only include in such transcript the following parts of the record, and none other, as necessary for the hearing of the appeal herein, to wit:

1. The bill for divorce.
2. Answer of respondent.
3. Replication.
4. Cross-bill.
5. " " motion to strike out.
6. Motion to suppress deposition of petitioner.
7. Stipulation of counsel as to testimony.
8. Notice to produce letters.
9. Order for alimony *pendente lite*.
10. Plea to cross-bill.
11. Motion to suppress deposition of def't.
12. All testimony on behalf of the parties.

35

13. Decree dismissing bill & cross-bill.
14. Opinion of court.
15. Complainant's appeal from decree.
15. Citation on complainant's appeal and acknowledgment of service.
16. Note.—Giving of appeal bond by compl't.
17. Appeal by defendant.
18. Waiver of citation on appeal by def't.
19. Note.—Giving of appeal bond by defendant.
20. Motion to suppress deposition of complainant.
21. Faculties, stipulation as to.

PADGETT AND FORREST,
For Petitioner.

We agree that the foregoing items shall constitute the record on petitioner's appeal in the above-styled cause, and the same will also constitute the record on respondent's appeal.

MILLAN & SMITH,
Sol's for Respondent.

April 23, 1900.

36 *Testimony on Behalf of Complainant.*

Filed Dec. 26, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
vs. } Equity. No. 20447.
LOUISA R. BERGHEIMER, Defendant. }

Testimony on behalf of complainant.

WASHINGTON, D. C., July 21st, 1899.

Met, pursuant to agreement of counsel, at the office of Messrs. Padgett & Forrest, in the Equity building, No. 317-19 4½ street N. W., on Friday, July 21st, 1899, at 3 o'clock p. m., for the purpose of taking testimony on behalf of complainant in above-entitled cause.

Present: Mr. Forrest, on behalf of complainant, and Mr. Millan, on behalf of defendant.

Whereupon WILLIAM L. PFEIFFER, a witness produced on behalf of complainant, being first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

Q. What is your residence and occupation? A. I have been engaged all my life pretty much in the furniture and upholstering business, and I have been in business in Annapolis, Maryland, twenty-five or thirty years—over twenty-five years. I live at 1209 O street N. W.

37 Q. When did you first go into business in Annapolis?

A. In 1866, right after the war, or a little earlier than '66.

Q. When you speak of Annapolis do you mean Annapolis, Maryland? A. Yes, sir.

Q. And down to what time did you remain in business in Annapolis? A. Till October, 1894.

Q. During the time you were engaged in business there did you meet the complainant in this case, Henry C. Bergheimer? A. Yes, sir.

Q. Do you remember when it was you first met him? A. That I cannot be positive of, it is so long ago. I could only guess at that. I think it was somewhere about 1887, or something of that sort. I cannot say as to the year. I might be refreshed about it. It seems to me it must be somewhere about twelve or fifteen years ago.

Q. You said it was in 1887. Was that the date? A. I would not say positively. I can only say from twelve to fifteen years ago; something of that sort. I could refresh my memory on that, but, having been asked the question right off-hand, I cannot bring my mind to remember the year. The circumstances are very fresh.

Q. At the time you first met him what was he doing in 38 Annapolis, Maryland? A. The first time I ever saw him was at the hotel, Kaiser house. I was there with Mr. C. Boessel, who was a jeweller and watchmaker, and he told me he was going to be in his employ, and he introduced him to me.

Q. What was Mr. Boessel's business there? A. Mr. Boessel carried on a watchmaking and jewelry establishment. It was the nicest and best one we had in the city.

Q. Subsequent to your introduction to Mr. Bergheimer was he engaged in any business or employment there? A. No, sir.

Q. Was Mr. Bergheimer employed at any time in Annapolis? A. No, sir; not to my knowledge, other than the time of his employment by Boessel.

Q. That is what I want to know. A. I didn't quite understand you. Yes.

Q. How long was he employed by Mr. Boessel, do you remember? A. That I could not say. I should say something like a couple of years or something of that sort—maybe longer.

Q. And what was his business with Mr. Boessel? A. He was a watchmaker. He sat at the front of the store with his watch bench. I was in and out there frequently, sometimes all the way from six to eight or ten times a day. My store was only three or four doors away from there and I had plenty of leisure to talk with and see Boessel, and I talked to Bergheimer in the absence of Boessel, 39 or to both of them.

Q. And during Mr. Bergheimer's stay there in Annapolis did you have occasion to see him frequently or otherwise? A. Yes. I saw him, I suppose, a dozen times a day right straight along the whole time he was there—every day.

Q. What — his deportment and conduct during the time he was there?

Mr. MILLAN: I object to that as immaterial.

A. I have always found him to be a perfectly correct man in every respect, and I didn't know anything at all against Bergheimer. His conduct and his general character was excellent, and I have heard it discussed by others. He was a popular man, and everybody liked him who came in contact with him.

Mr. MILLAN: I object to the answer for the same reason.

Q. Did you ever have any conversation with him about his purchasing anything in the furniture line from you? A. Yes, sir.

Q. State what that was.

Mr. MILLAN: Objected to as irrelevant, immaterial, and incompetent. Any statement made by the complainant is objected to as incompetent for any purpose.

A. He purchased from me one or two small articles of furniture, as near as I can remember, one that at that time, fifteen years ago, was quite a novelty, being a walnut high chair for a baby, with a large tray in front, and this combination affair to let down into a carriage to roll on wheels or stand up and make into a chair 40 and quite a number of different things. It was quite a nice thing and cost seven or eight dollars, and I packed and shipped it to people there.

Q. To Richmond, Virginia? A. Yes, sir.

Q. Do you recall who you shipped it to? A. No, sir; I don't remember the names. He told me at the time who it was for.

Q. Whom did he say it was for?

Mr. MILLAN: Objected to for the same reason.

A. For his little one; his child. Then he afterwards spoke to me. I had some conversation with him in reference to fitting up some rooms or quarters for himself and wife, and he asked what it would cost and one thing or another.

Mr. MILLAN: I object to that for the reasons already stated.

Q. In that connection, did he make any statement about his wife or his wife's coming there?

Mr. MILLAN: Same objection.

A. Yes; he said he thought of bringing her on to Annapolis, and wanted to know about what those things would cost; and he was going down to Richmond to make arrangements to bring her on, and he did go—that is, he left town for that length of time.

Q. How long was he gone? A. I think three or four days. I remember three days. I know he got off from his work a short time.

41 Q. You said, I believe, you came to Washington in 1894? A. Yes, sir.

Q. Since you have been here have you seen much or little of Mr. Bergheimer? A. Not very much; not so much. I would see him

only occasionally passing by the store or something of that sort. I had an establishment down on 11th street up to April last, and then I had a better opportunity of seeing him at that time. Since then I moved away from there and did not often see him.

Q. Since you have seen him on coming here to Washington in 1894 what have you to say so far as your observation has enabled you as to his deportment and conduct here?

Mr. MILLAN: Objected to as incompetent.

A. As I say, what I have seen of him he has been in his usual condition just as I found him in Annapolis. He was always liked, so far as I know. I never saw anything wrong with Mr. Bergheimer in my life in any way.

Cross-examination.

By Mr. MILLAN:

Q. Mr. Pfeiffer, you don't know where he went when he went away from Annapolis on that occasion further than what he told you? A. That is all.

Q. You don't know as a matter of fact that he did go to 42 Richmond? A. No, sir; except what he said.

Q. Where was your establishment on 11th street in this city? A. 429 11th street. Previous to that I have been on 11th street since October 24th, 1894, at 417. I began business with my brother; he had a piano store there.

Q. You saw him passing there? A. Yes, sir; I saw him passing there on his wheel, and I would pass by Galt's going to my lunch.

Q. You don't know where he was going or what he was doing when he passed there? A. When he passed there he usually passed in the evening on his way home; I suppose where he boards.

WM. L. PFEIFFER.

By JOHN A. SWEENEY,
Examiner in Chancery.

43 At the same time and place also appeared JAMES J. MCLEOD, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination by Mr. FORREST:

Q. Please state your residence and occupation. A. 13 K street N. E.; age, about forty-six; occupation, United States railway mail service.

Q. How long have you been employed in the mail service? A. About ten years.

Q. And are you now permanently or only temporarily in the city? A. This is my residence. Of course, I am a week here and a week out.

Q. When do you go on your next run? A. On Monday. I am here a week and away a week.

Q. And during your employment in that service how long have you lived in the city of Washington? A. I have been living here for the last thirty years.

Q. Prior to that time where did you live? A. Well, I lived part of the time down in Richmond and was employed there.

Q. Richmond, Virginia? A. Richmond, Virginia. Of course, my family lived here in the meantime.

Q. Do you know the parties to this cause, Henry C. Bergheimer and his wife? A. I do.

44 Q. How long have you known them? A. You mean since they were married?

Q. For instance, the complainant, Henry C. Bergheimer, how long have you known him? A. I might say I have known him for eighteen years at least.

Q. Did you know him before he was married to his wife? A. Yes, sir; I did.

Q. And at what time did you become acquainted with his wife—before or after their marriage, I mean? A. I knew her before she was married. I used to see her around to her mother's house.

Q. Did you visit her mother's house? A. Yes.

Q. Subsequently to the time you moved to Washington, did you ever visit the defendant, Mrs. Bergheimer, in Richmond? A. I visited her once.

Q. Do you remember when that was? A. That must be some ten years ago.

Q. Will you state what the purpose or object of that visit was? A. I didn't have any particular reason for going there. I liked the lady and I wanted to see her and to find out how she was doing, and I was in hopes that she and Henry would come together again. I liked them both.

Q. By Henry you mean the complainant? A. Yes, sir.

45 Q. State what, if anything, took place on that visit and what conversation you had with her. A. I don't remember exactly what was said, but I wanted her to come and live with Henry again, and I inferred from her words—

Mr. MILLAN: I object to anything the witness inferred.

Q. Go ahead and state it in your own way. A. I understood from her conversation she did not have any desire to live with Mr. Bergheimer any more.

Q. Can you state anything further than that? I mean by that, cannot you state the words she used? A. No, sir; I don't remember them because they did not make any impression on my mind at that time—no lasting impression. It has been some time ago.

Q. I understand you to say from what she did say that you understood she did not desire to live with him again?

Mr. MILLAN: Objected to as leading and as calling for incompetent evidence. Impressions are not evidence.

A. No, sir.

Q. And, as I understand you, the exact language you cannot give at this time? A. No, sir; I cannot.

Q. Do you remember where the conversation took place? A. It was in a dry-goods store on Main street. I don't remember the name of it.

Q. Was she, so far as you know, employed there at that time? A. Yes; she was employed there at that time.

Q. And on your return to Washington did you have any 46 conversation with Mr. Bergheimer as to your visit and what took place?

Mr. MILLAN: I object to that as immaterial.

A. Yes; I did.

Q. Did you tell him what took place?

Mr. MILLAN: Objected to for the same reason.

A. Yes, sir; I told him what took place.

Q. Did you ever make any other visit to Mrs. Bergheimer? A. No, sir; that was the last. I found there was no use to make any more visits to her on Mr. Bergheimer's behalf.

Mr. MILLAN: This answer is objected to as stating a conclusion and not a fact.

Q. Do you remember about what year it was Mr. Bergheimer came to Washington? A. No, sir; I could not tell you that.

Q. Approximately, could you say how long ago it was? A. I should judge it would be between twelve and fourteen years. I think it was about that, as near as I can recollect. I never paid much attention to it. I don't pay much attention to years any way.

Q. Since he has been in Washington have you or not met him? A. Yes, sir; I have; frequently.

Q. And have you on such occasions been in his company for any length of time? A. I have.

Q. So far as you know, and your observation extends, 47 what has been Mr. Bergheimer's deportment and conduct in this city since he came here? A. His conduct has been as good as any gentleman's I know. That is all I could say for any man I associate with.

Mr. MILLAN: That is objected to for the reasons already stated, as his deportment is not in issue in this cause.

Mr. FORREST: Solicitor for complainant states that he puts in this evidence because of the answer and its character as filed herein making charges against the complainant.

Cross-examination.

By Mr. MILLAN:

Q. You went down to Richmond at that time because of your friendship for her? A. My friendship for both.

Q. Didn't you say you have no special reason for going except you like- her? A. I said I had a desire for both to come together, because I lived both of them and wanted to see them live together, and went down to see if I could not induce her to come and live with Henry again.

Q. Nobody asked you to go? A. Nobody asked me to go.

Mr. FORREST: You started to say something. I want you to complete the answer.

48 The WITNESS (continuing): But she gave me to understand she did not want anything more to do with Henry, so I dropped out altogether with the case.

Mr. MILLAN: That part of the answer is objected to as not responsive to the question and as stating a conclusion of the witness and not a fact.

Q. Nobody asked you to go? A. Nobody asked me to go.

Q. And you went of your own accord? A. Yes; I went of my own free will. In fact, I don't think I had any understanding about it when I went down there. I just went down to see if I could not bring them together.

Q. And you did not go on behalf of Mr. Bergheimer? A. I think I said to Mr. Bergheimer before I went that I was going. I may have told him I would go to Richmond some time, and that I wanted to go down to Richmond to see his wife and children because I liked them.

Q. Why did you say on your direct examination that you found that there was no use of going to see her again in his behalf, if you did not go in his behalf. A. I did not have any prompting by him; he did not prompt me to go.

Q. Who was present when this conversation took place? A. There was nobody present. I didn't know anybody there. I went in the store and asked for Mrs. Bergheimer. Of course, there was none of the clerks came around to hear what I had to say to 49 her. It was none of their business. We just had a conversation about ten minutes and I found out how the children were and how she was. I liked them both.

Q. You don't know of your own knowledge anything about the circumstances of the separation? A. No, sir; that was after he left Richmond. I don't know anything about that.

Q. And you say Mr. Bergheimer's conduct since he has been in this city has been everything a gentleman's should be? A. I must say that.

Q. Have you had opportunity of observing? A. Yes; I have seen him. I met him in town, around in his house and around at his store where he is employed.

Q. About how often have you met him? A. That would be a hard question to answer.

Q. How many times a week, about? A. I haven't met him a week. I could not say I met him a week at all. I heard of him.

Q. How many times a month? A. I have seen him many times passing by.

Q. About how many times a month? A. I could not tell you how many times a month. I would see him occasionally, like you would see a friend of yours.

Q. I am asking you for your best recollection. You can 50 tell us about how much you have seen of him in your way.

A. I might tell you some time I haven't seen him for a year.

Q. Is that a fact? A. That would be a fact; yes, sir; not to talk to him. I might see him and waive my hand to him. I have often gone by and looked in the window and saw my friend busy there and I would not go in.

Q. So it is a fact that since he came to Washington it would be, sometimes be, as much as a year you would not see him and talk to him? A. Yes, sir; that is my impression, to see him and talk to him.

Q. Did you ever go out with him in the evenings to visit or go to a place of amusement or anything of that sort? A. I don't think I have.

Q. Do you know where he has been in the habit of spending his evenings? A. No, sir; I do not.

Q. Do you whether he is a man who ever drinks? A. What do mean; getting intoxicated?

Q. You are speaking of his habits now. A. I never saw him under the influence of liquor as long as I have known him.

Q. Did you ever see him drink liquor? A. I never saw him drink liquor to my knowledge. I have seen him drink beer.

51 Q. How often? A. One or two glasses, like any other man would do. I never saw him drunk in my life, to my knowledge.

Q. Do you know where he is in the habit of spending his evenings? A. I understand that he is in the habit of spending most of his evenings—

Q. Tell me what you know, not what you understand. A. I don't know.

Q. The times when you would see him would be mostly at his place of business during the day? A. If I wanted to see him I would go to his house and I always found him there. I never found him out at six or seven o'clock in the evening, but always found him in his room.

Q. Suppose you wanted to see him in the daytime you would go where? A. To his place of business.

Q. Most the time you saw him would be in the daytime? A. Yes, sir.

Q. And at least half of the time you would be out of the city? A. Yes, sir; I would be out of the city half of the time.

Q. Where do you live in reference to the place where Mr. Bergheimer lives—do you live near each other? A. I live at 13 K street N. E. and he lives on F street, I think; about five minutes' ride on a bicycle and about ten minutes' walk.

Q. F street N. W. or northeast? A. F street N. W. It does not take long to go there.

Q. Between what streets? A. I believe it is between Second and Third. I never paid much attention to what streets it is between, but I know where it is.

Q. As a matter of fact, Mr. McLeod, all you mean to say in this connection is, so far as you have seen Mr. Bergheimer, his habits are good? A. Yes; so far as I have seen.

Q. But you don't pretend to say that he might have done a great many things? A. Of course, I would be very foolish to say that. He might say the same thing about me. He does not know what I do in Fayetteville, down in North Carolina.

Redirect examination.

By Mr. FORREST:

Q. I understood in your examination-in-chief, Mr. McLeod, that, so far as you have seen Mr. Bergheimer and so far as you have heard his reputation, you said his deportment and conduct is good? A. Yes.

Mr. MILLAN: Objected to as leading and for the reason that it is putting into the mouth of the witness what his testimony will 53 not show. The record will not show that he stated what he heard concerning Mr. Bergheimer.

The WITNESS (continuing): I never heard anybody say anything about him in Washington. I will tell you now he certainly bears a good reputation here.

Mr. MILLAN: Answer objected to for the reason that it is incompetent and immaterial.

Q. That is his reputation in Washington among those who know him? A. Yes, sir; it certainly is.

JAMES L. MCLEOD,
By JOHN A. SWEENEY,
Examiner in Chancery.

54 At the same time and place also appeared JOHN P. PRELLER, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination by Mr. FORREST:

Q. What is your occupation and residence? A. Jeweller; residence, 328 2nd street N. E.

Q. How long have you been a jeweler? A. I went to learn my trade about 1870.

Q. How long have you been in Washington as a jeweler? A. Since 1883—July, 1883.

Q. Prior to 1883 where were you employed and in what place? A. Baltimore.

Q. How long were you employed there? A. I worked about five years in Baltimore.

Q. Were you ever at any time in Annapolis? A. Yes, sir.

Q. Do you remember when that was? A. I went to Annapolis during the centen-ial year—1876.

Q. How long did you remain there? A. About six years.

Q. And during the time you were employed in Annapolis with what firm were you employed? A. Mr. C. Boessel.

Q. While in Annapolis, Maryland, did you become acquainted with the complainant in this case, Mr. Henry B. Bergheimer?
55 A. Yes.

Q. Do you remember about what year that was, or how long after you went to Annapolis? A. About two years after I went there, as near as I can remember. It may not have been that long.

Q. That would make it somewhere about 1878? A. About 1878.

Q. Was he ever employed in the same place? A. Yes; in the same place by the same man.

Q. How long? A. About three years, as near as I can remember.

Q. What was his business or profession? A. He was a watch-maker.

Q. During the time you remained in Annapolis, had you occasion to see him often? A. Yes; I saw him every day.

Q. And where would you see him? A. In the store. We worked together.

Q. Did you ever see him outside the store? A. Yes, sir; sometimes.

Q. And during his stay in Annapolis, what was his deportment and conduct?

Mr. MILLAN: Objected to as immaterial.

A. First class in every respect.

Q. What knowledge, if any, have you during his stay in Annapolis as to Mr. Bergheimer's writing or corresponding with his wife in Richmond, Virginia? A. I know he used to write to her.
56 He told me he would write to her.

Mr. MILLAN: I object to that as hearsay. What the complainant told the witness about writing is clearly incompetent.

Q. What about any answers he may have received from his wife in Richmond? A. He used to tell me he would get letters, and his wife—

Mr. MILLAN: That is objected to for the same reason, and for the further reason that the contents of the letters is incompetent.

Mr. FORREST: I would suggest that counsel wait until the witness has completed his answer and not stop the witness in the middle of his answer, thus breaking up the answer and its continuity.

The WITNESS (continuing): And that his wife would not come to him to Annapolis; she would not come to Annapolis.

Mr. MILLAN: Objected to for the reasons already stated.

Q. And how frequently did you hear that during his stay at Annapolis?

Mr. MILLAN: Objected to for the same reason.

A. He used to tell me almost every time he would get letters, as near as I can remember.

Q. You may state whether or not there was any anxiety or desire on his part to have his wife come there?

Mr. MILLAN: Objected to as calling for a conclusion on the part of the witness and as immaterial unless it be shown that this anxiety was communicated to the defendant in the case.

57 A. He seemed to be very much worried because she did not come on to Annapolis.

Q. Did he ever, in any way, express himself in that manner?

Mr. MILLAN: Objected to as calling for self-serving declarations on the part of complainant.

A. As near as I can remember, he always wanted her to come, and was very anxious for her to come.

Q. And these declarations you heard in Annapolis at that time?
A. Yes, sir.

Q. What year was it you say you came to Washington? A. 1883.

Q. Since you have been here, have you seen much or little of Mr. Bergheimer? A. I saw him once in a while. At first I used to see him often, but I haven't seen him quite as often of late years.

Q. Where would you generally see him? A. He used to come to see me at the house regularly for the first two years. Once a year he used to come to my house, and then he would come there once in a while. I could not say how often I would meet him in the store. I would meet him there occasionally because I had occasion to go to the store.

Q. Do you know where he lives? A. Yes, sir.
58 Q. Did you ever visit him there? A. Yes, sir.

Q. During what time of the day? A. I have been to visit him Sunday mornings and I have been there of evenings.

Q. How frequently have you done that? A. I did not see him at the house very often—maybe not once a year, taken all in all.

Q. Do you know other people here in Washington who knew him? A. Yes, sir.

Q. Do you know what his reputation is among those who knew him in this District for good conduct and sobriety?

Mr. MILLAN: Objected to as incompetent and inadmissible for any purpose.

A. It is first class.

Q. Do you remember the time that Mr. Bergheimer was sick, some one or two years ago? A. Yes, sir.

Q. Had you occasion during that sickness to visit the place where he was living? A. Yes; I used to call there and inquire how he was getting along.

Q. Were you allowed to see him? A. No, sir. The lady at the house told me I was not allowed to see him; she had orders not to allow anybody to see him.

Q. Do you know how long he was sick? A. I judge he was sick five or six weeks.

59 Q. What was the matter with him? A. Typhoid fever, I understand.

Cross-examination.

By Mr. MILLAN:

Q. Did you ever see any letter Mr. Bergheimer wrote to his wife while he was in Annapolis? A. I don't remember that, sir. I cannot say positively I ever saw a letter.

Q. Did you ever see a letter he received from her? A. I cannot remember that, either; no, sir; not positively. I may have seen it, but I cannot say positively. I cannot recollect.

Q. Of late years you have seen very little of him? A. Well, I see him, maybe, once a month and, maybe, sometimes oftener than that, and I would not see him, maybe, for three months.

Q. You said in your direct examination that of late years you haven't seen so much of him. What do you mean by that expression, "of late years"—how long? A. Maybe, say, for the last five or six years.

Q. For the last five or six years you haven't seen as much of him as before? A. Yes, sir. It may be a little longer than that.

Q. And during that time you have been seeing him once a month? A. I may have seen him once a month or oftener. I have to go to the store.

60 Q. And on those occasions you see him at his place of business? A. Yes, sir.

Q. Have you visited him during a period of five or six years past? A. Yes.

Q. How often? A. Well, I see him probably three or four times a year.

Q. And you don't know where he spends his evenings? A. No, sir; I cannot say that.

Q. And you don't undertake to say that your acquaintance with him for the last five or six years is such as to enable you to say what his habits are? A. No, sir; I cannot say anything like that.

Q. So far as you know, he might indulge in a great many immoralities and you might not know it? A. No, sir; because I don't see him.

Q. You don't know? A. No, sir.

Q. Who did you ever hear say his reputation was first class? A. Well, I haven't heard anybody say, but I know people who know Mr. Bergheimer, and they all say there is not a better man in the world.

Q. Who did you ever hear say what kind of a man he is? A. I could say the gentleman I work for.

Q. Who is he? A. Mr. Johannes.

61 Q. What did you hear him say? A. I heard him say Mr. Bergheimer was a good fellow.

Q. You heard him say he was a good fellow? A. Yes; speaking of Bergheimer. We worked together. We have done work together. We do work for Galt, and this Mr. Johannes comes in contact with him and we speak about him.

Q. And you heard him say Bergheimer was a good fellow? A. Not those words exactly.

Q. Who else did you ever hear say anything about him of that character? A. Almost everybody I knew could say that of him.

Q. Who did you ever hear say it in fact? I am not asking who could say it. You have undertaken to say what his reputation is among people who know him. I am asking you to state who you ever heard speak of him? A. Any one in the shop where I am at work. We often speak of Bergheimer and say he is all right and he is a good fellow.

Q. What is the name? A. Mr. Irwin.

Q. What is his first name? A. Richard L.

Q. That is a gentleman who works with you? A. Yes; he works with me.

Q. And he thinks Bergheimer is a good fellow? A. Yes.

Q. Anybody else? A. Well, if I ask anybody in the shop they would say the same thing, I am sure. I don't know that I 62 have asked every one whether Bergheimer is a good fellow, but we often speak about him in that way and they would say, Bergheimer is all right.

Q. That is the substance of what you ever heard them say? A. Yes, sir.

Q. Who is this lady who told you you could not see Mr. Bergheimer when he was sick? A. Miss Kaiser.

Q. Is that the lady where he boards? A. Yes, sir; she lives at the house.

Q. Where is that house? A. It is on F street between 1st and 2nd, I think.

Q. Does he live at the same place now? A. Yes, sir.

Q. Do you know who else lives in that house? A. I know Mr. Kaiser, the old gentleman, lives there.

Q. This lady is the daughter of Mr. Kaiser? A. Yes, sir; I think so.

Q. Mr. Bergheimer boards there? A. Yes, sir.

Redirect examination.

By Mr. FORREST:

Q. Did you ever hear anybody say here in Washington—that is, persons who knew Bergheimer—that he was a dissolute and 63 a drunken fellow? A. No, sir.

JOHN A. PRELLER,
By JOHN A. SWEENEY, Examiner.

Whereupon an adjournment was taken to meet subject to agreement of counsel.

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FRIDAY, July 28th, 1899—10 o'clock a. m.

Met pursuant to agreement of counsel.

Present: Same counsel.

Whereupon JOHN A. HILL, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

Q. Where do you live? A. 702 West Fair street, Baltimore, Maryland.

Q. How long have you lived in Baltimore? A. I have lived there all my life, with the exception of eight years, when I was in Richmond from 1860 to 1868.

Q. And what is your business? A. I am express messenger for the United States Express Company at the present time.

Q. How long have you been with the express company? A. Ten years now, the last time.

Q. Do you know the parties to this cause, Mr. Henry C. Bergheimer and Louise R. Bergheimer? A. Yes; personally.

Q. How long have you known Mrs. Bergheimer? A. Since about 1866.

Q. How long have you known Mr. Bergheimer? A. I have known him for about thirty-one or thirty-two years.

Q. During the time you knew Mrs. Bergheimer how well 65 did you know her? A. In fact I lived right in the house with her and I was very intimately acquainted with her, and with the whole family, in fact.

Q. What was her father's employment? A. He was a plumber and gas-fitter.

Q. Did you ever work with him? A. Yes; I worked with him. I worked with him in Baltimore and Richmond, too.

Q. During your acquaintance with Mrs. Bergheimer, did you ever see her write? A. Quite often.

Q. Are you familiar with her handwriting? A. Yes, sir.

Q. Would you know it if you were to see it now? A. Yes, sir.

Q. Look at this letter which I now show you, dated March 11th, 1879, and tell me whether that is in the handwriting of Mrs. Bergheimer. A. Yes, sir; that is right.

Q. Have you any doubt about it? A. No, sir.

Q. There is an envelope (handing witness envelope). What do you say as to the handwriting on that? A. That is about right.

Q. When you say that is about right, what do you mean? A. What I mean by that is that it is a fac-simile of the letter.

Letter just identified by the witness marked for identification with the letters J. A. S.

Q. Since leaving Richmond and moving to Baltimore, have you ever visited Richmond? A. Yes, sir.

Q. How frequently? A. Well, I could not tell you the exact number of times, but it was fifteen or twenty times.

Q. And on those visits to Richmond state whether or not you ever saw Mrs. Bergheimer? A. I always went to see her. I never went there in my life I didn't go to the house.

Q. When was the last time you went to Richmond and saw Mrs. Bergheimer? A. Last October, a year ago.

Q. On those visits and when you saw her did she ever speak of her husband? A. On every occasion, to my knowledge.

Q. Now you may state whether or not in any of those conversations she said anything about returning to him or desiring to return to him. A. She never mentioned to me she had any desire to return to him.

Q. Did she say anything on the subject at all? A. No; she never dwelt on it. Of course she knew very well that I understood the situation, and of course we never had any lengthy conversation in regard to it.

Q. You may state if you have any recollection of anything she said upon the subject—that is, the subject of returning to him or not returning to him. A. Well, she never expressed any desire to me that she had any desire to return to him.

Q. During the times of your visits to Richmond do you know whether or not she was employed there? A. Yes, sir.

Q. Whereabouts, if you know? A. Well, I think the name of the firm was Breeden & Tally, if I am not mistaken. The place of business was on Broad street, I think between 4th and 5th, as near as I can recollect. It was a dry-goods store. I think that is the name, but I would not be positive about that. I think, as near as I can recollect, that is the name of the firm. I don't think they are in business now. I think they failed since that time, if I am not mistaken.

Cross-examination.

By Mr. MILLAN:

Q. When was the last time you saw Mrs. Bergheimer in Richmond? A. Last October a year.

Q. That was October, 1897? A. Yes, sir.

Q. Prior to that when had you last seen her? A. Well, I could not give you the exact dates. I made so many visits down there I could not give you the exact date, but I have been paying visits down there—well, I go down there once a year, sometimes, 68 and once every two years, but I am satisfied it was not over eighteen months prior to that time when I saw her.

Q. According to your best recollection you would see her at intervals of a year and a year and a half and two years? A. Yes, sir.

Q. Not oftener than that? A. No, sir; not oftener than that.

Q. About what would be the length of the visits you would make to Richmond? A. Well, they would average from two days to ten days, very seldom over ten days at a time, but from two to ten days, according to the time I could get off.

Q. Did you stop at Mrs. Bergheimer's house or at the house where she resided? A. I merely paid them a visit. I didn't stop to stay any length of time. I went there possibly to spend an evening. I did so the last time I was there, when I was there from seven or eight o'clock in the evening till nine or ten o'clock, and I would call in the daytime. Of course, she was never about during the day, as she was at work.

Q. So you only saw her in the evening? A. In the evening. She would possibly come in for her meals and would go out. She would be there possibly an hour.

Q. About how many times did you ordinarily go to the 69 house where she lived during one visit to Richmond? A.

Well, I was there very nearly every day. If I was in that locality—anywhere within a few squares—I would drop in.

Q. How often did you see her? A. I very rarely went to the house but what I saw her there.

Q. You usually saw her in the presence of other people? A. Yes, sir.

Q. You never went to see her at the instance of Mr. Bergheimer? A. Never in my life, sir.

Q. Did you know them before they were married? A. Yes, sir.

Q. As to this writing, Mr. Hill, when did you ever see Mrs. Bergheimer write? A. I saw her at her own home.

Q. When? A. Well, from the time she started to school. I never saw her write much when I would be paying a visit, don't you understand, but when she would be going to school, and I also received a letter from her about ten or twelve years ago stating she was going to pay me a visit.

Q. Have you seen her write at any time since you left Richmond, in 1868? A. Have I seen her write?

Q. Yes. A. No, sir; I never saw her write, but I saw the letter I received.

70 Q. The one letter? A. The one letter I received, and I have seen her handwriting at home to other persons; but she did not write to me.

Q. You have no hesitancy in saying, though you haven't seen her write for thirty-one years, that this letter shown you here is her handwriting? A. As near as I can recollect, I am willing to swear that is her writing.

Q. You may, however, be mistaken? A. Of course, there is always room for doubt; but I have seen a great deal of her writing at times, and before I saw that letter I said she wrote a very plain, open hand.

Q. Have you been thrown with Mr. Bergheimer or have you had any acquaintance with him since leaving Richmond in 1868? A. Yes, sir; when he left there he came to Baltimore and he paid me a

visit. He only remained a short time when he secured a position in Annapolis.

Q. Since that you have seen nothing of him? A. Well, yes, sir; I have seen him. I could not say exactly the number of times, but I will say five or six times since that.

Q. In thirty years? A. No, sir; since he left Richmond. It has been eighteen or twenty years since he left.

Q. Five or six times since he left Richmond? A. Yes; that is the time he left Richmond and came to Baltimore. Of 71 course, he never lived in Richmond since he left there. He paid a visit there, but never lived there to my knowledge.

Redirect examination.

By Mr. FORREST:

Q. When you paid visits to the house of Mrs. Bergheimer in Richmond, did you always see her in the presence of others? A. Yes, sir.

Q. Did you ever have talks with her alone? A. Yes, sir.

Q. You say that she wrote to you saying that she was going to pay you a visit. Did she pay you a visit according to the letter she wrote you? A. Yes, sir.

Q. You have also stated that you have seen her writing to other people. What persons do you mean? A. Well, in her compositions in school, for instance; when she was going to school, you know—now, I cannot just recollect who I saw her write letters to, only I have seen other letters Mr. Bergheimer had, if I am not mistaken. I don't say it is one or more. I have seen her handwriting a number of times, but not of recent date. The last letter I saw was the one she wrote me ten or twelve years ago.

Q. Do you know whether or not she wrote to your people at home? A. No, sir; she never did. If she did it never 72 came to my knowledge.

Recross-examination.

By Mr. MILLAN:

Q. What you mean to say is that this one letter which came to you is the only writing of hers you have seen or received in thirty-one years? A. That is the only letter she ever wrote to me.

Q. The other writing you spoke of having seen was prior to 1868? A. Yes, sir.

Q. You said in answer both to my question and to that of Mr. Forrest that when you went to Richmond you would always see Mrs. Bergheimer in the presence of other people? A. Yes, sir.

Q. But you said in answer to another question you would have conversations with her alone. What do you mean by that? A. Yes; I have. For instance, I would go to her house and maybe her parents or her sisters or some of them would go out and leave us there alone for the time being, and possibly I have gone there

before now and when I would go to leave she would naturally come to the door and stop and have a few minutes' conversation with me.

Q. In a casual way? A. In a general way.

Q. You don't mean to say you ever took her apart to have a private conversation with her about her troubles? A. No, 73 sir; never in my life. It never entered my mind.

Q. You never took her apart to consult her about her separation from Mr. Bergheimer? A. No, sir; I always advocated the other way.

By Mr. FORREST:

Q. But in the conversations that took place she spoke about Mr. Bergheimer? A. She frequently mentioned his name.

JOHN A. HILL,
By JOHN A. SWEENEY,
Examiner in Chancery.

74 Also EMMA M. SCHREYER, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

Q. Where do you live? A. Annapolis, Maryland.

Q. How long have you lived there? A. I lived part of the time in Washington, but I have lived in Annapolis since I was a very small child; I might say all my life.

Q. Are you married or single? A. Married.

Q. Do you know Henry C. Bergheimer, the complainant in this case? A. Yes, sir.

Q. How long have you known him? A. It has been about twenty years fully.

Q. Do you remember what year it was you first met him? A. No; I cannot remember what year it was, but it was about eighteen or twenty years ago. He was in Annapolis about three years.

Q. Where did you meet him? A. Right at my uncle's, where he first came to board.

Q. In Annapolis? A. Yes, sir.

75 Q. How long did he board at your uncle's? About three years.

Q. And how long did he remain in Annapolis? A. He boarded there until he left Annapolis and came to Washington.

Q. During the time he boarded there do you know whether he was working or not; and, if so, where? A. Yes, sir; always.

Q. With whom did he work? A. Mr. Boessel.

Q. And what was Mr. Boessel's business? A. He kept a jewelry store.

Q. How far was that jewelry store from your house? A. About a block. In fact, Main street is one long street. You call it about a block. It was right on the street where he boarded.

Q. How frequently during the time that Mr. Bergheimer boarded at the house of your uncle's did you see him there? A. Every day; three times a day. Every meal he was there, and in the evening he was always there.

Q. And during the time of his stay there what was his deportment and conduct?

Mr. MILLAN: Objected to as immaterial and incompetent.

A. His conduct?

Q. Yes. A. Very good. I don't know anything but what his conduct was good.

76 Q. What, if anything, do you know about any correspondence or letter-writing that may have taken place between Mr. Bergheimer and his wife during the time he was staying at your uncle's house? A. I know he always wrote home and would come right down and show us the letters and talk to us. He always talked to my aunt just the same as if she was a mother to him and sat down and read the letters and told her all about his troubles.

Q. In your presence? A. Yes; in my presence and in my aunt's and uncle's. Sometimes the family would be there altogether, and my aunt would always try and console him and talk to him.

Mr. MILLAN: This answer is objected to as incompetent.

Q. Do you remember any expression in or the contents of any particular letters that were written to him?

Mr. MILLAN: Objected to as incompetent.

A. Well, I do not. I know she refused to come on and live with him. She refused to come; but, of course, it has been so long ago it is hard to remember everything.

Mr. MILLAN: Same objection to the answer as incompetent and inadmissible.

Q. How was the mail delivered in Annapolis? A. It was brought right to the house. My uncle would send for the mail, and the mail was always brought to the house.

Q. And would Mr. Bergheimer's mail come to the house? A. Yes, sir.

77 Q. Did you ever see any of the mail that came there for him? A. Yes, sir; the letters came right to the house. I did not pay any particular attention. It was laid down until he came to his meals and given to him.

Q. Did you ever see any letters come there for him? A. Yes.

Q. Did you notice the postmarks on them? A. Yes. I know they came from Richmond. We knew when the letters came. Of course, I didn't take such particular notice of them. Of course, he would always open the letters and sit down and read them and come and tell us.

Q. During his stay there, do you know of any visit he made to

Richmond? A. Yes, sir; I know he went to Richmond, but he didn't see his wife. He saw the children, but he didn't see his wife.

Mr. MILLAN: Objected to as hearsay.

Q. What you know of, that you know from him? A. Yes; from what he said. Of course, he came home and told us.

Mr. MILLAN: Objected to as incompetent and inadmissible.

Q. Did you ever hear Mr. Bergheimer express himself about his wife? A. Yes. He thought a great deal of her, and was very anxious for her to come there.

Mr. MILLAN: Objected to as being a self-serving declaration on the part of the complainant.

78 Q. Have you heard him say that more than once? A. Yes, sir.

Cross-examination.

By Mr. MILLAN:

Q. You don't know he didn't see his wife, except what he told you? A. That is all.

Q. You don't know he even went to Richmond except from what he told you? A. Except from what he told me. Of course, he said he was going, and I supposed that is where he went.

Q. You don't know he ever wrote to his wife, except he said so? A. Of course, we would see the letters. I didn't read the letters he wrote to his wife.

Q. You don't know he ever got a letter? A. Of course, we saw the letters.

Q. That came from Richmond? A. Yes; and he would read the letters right there, and of course they must have come—

Q. I am asking what you know of your own knowledge. A. He would tell us he had letters from his wife and he would sit there and read them.

Q. He would have a letter? A. Yes.

79 Q. You remember after eighteen years he would get letters from his wife postmarked Richmond? A. Yes; eighteen or nineteen years ago.

Q. Let me ask you again how mail was delivered there. A. We would always send to the post-office and get the mail.

Q. It was not a free delivery? A. No, sir; not then.

Q. You would always see Mr. Bergheimer's mail? A. Yes; his mail was always laid out there if he was not there to get it himself. It would lay out until he would come home.

Q. These expressions he made in reference to wanting his wife back or liking to have her back; you don't know he ever told her that? A. His wife?

Q. Yes. A. No, sir; all we know is, of course, he would read the letters and from all his actions we could not think anything else.

EMMA M. SCHREYER,
By JOHN A. SWEENEY,
Examiner in Chancery.

80 Also CHRISTINA A. FARRELL, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

Q. Where do you live? A. Annapolis, Maryland.

Q. How long have you lived there? A. A. Thirty-seven years; all my life.

Q. Are you a married or single lady? A. Married.

Q. Do you know the complainant here, Henry C. Bergheimer? A. I do.

Q. When did you first meet him? A. About 1878 or a little after.

Q. Where did you meet him? A. At my uncle's boarding-house, Henry Kaiser.

Q. In what place? A. In Annapolis, Maryland; Church circle and Main street.

Q. Did you say you met him at your uncle's? A. Yes.

Q. What was he doing there? A. He boarded there.

Q. How long did he board there? A. Three years or a little over; about three years.

81 Q. And during the time he boarded there was he employed in any way? A. Yes.

Q. Where? A. In Mr. Boessel's jewelry store.

Q. And what was his employment there? A. Watch-making.

Q. During the time he was boarding at your uncle's how frequently did you see Mr. Bergheimer? A. At every meal; and at night he would spend his time at home with us in the house.

Q. And during the time he boarded there, what have you to say as to his deportment and conduct?

Mr. MILLAN: Objected to as immaterial and incompetent.

A. Very good.

Q. During the time he was boarding there, you may state, if you know, how the mail was delivered. A. We sent down to the post-office to get the mail.

Q. What, if anything, do you know about Mr. Bergheimer's correspondence or letter-writing with his wife? A. We always saw the letters when they came over and could always tell by the handwriting, as it was pretty much about the same. Of course, I could not remember, but we used to say it was a letter from his wife.

Mr. MILLAN: Objected to as hearsay.

Q. These letters that came there—have you any recollection how they were postmarked? A. Richmond.

82 Q. After the receipt of them did he ever read them? A. Yes. He read the part he wanted to read to himself and would read them out to us.

Q. How soon after he received them? A. After he received the letters.

Q. How soon after he received the letters did he read them? A. He would sit down and open it and read it, and would come to us and tell us his troubles.

Mr. MILLAN: Objected to as incompetent and inadmissible.

Q. When you say he would read it, would it read it out loud? A. Yes, sir.

Q. Do you know anything about his writing to Richmond? A. He would say he was writing to his wife or writing home.

Mr. MILLAN: Objected to as hearsay.

Q. Did you ever see the directions on any of the letters? A. That were sent?

Q. That were sent from Annapolis to Richmond. A. I never noticed them, but I know he would have them there and leave them there to be mailed sometimes if he could not go down himself.

Q. My question was whether you remember seeing the directions on any of the letters. A. No.

Q. Did you ever hear him express himself in any way about his wife or his desire to have his wife with him?

Mr. MILLAN: Objected to as hearsay and inadmissible.

83 A. I did; yes, sir.

Q. What have you heard him say?

Mr. MILLAN: Objected to as inadmissible and incompetent.

A. That he engaged the rooms at my uncle's and she did not want to go to housekeeping.

Q. You know that? A. Yes.

Q. How shortly, if you know, was that after he came to board at your uncle's? A. He wanted to see first whether he had a steady job and to see if he would be able to make things meet. Then he made the arrangement with my uncle for the room if she wanted to go to board there, and if she did not he engaged furniture so she could go to housekeeping; whichever way she wanted.

Mr. MILLAN: Objected to as inadmissible.

Cross-examination.

By Mr. MILLAN:

Q. You don't know, except from what he told you, that he ever did get a letter from his wife at all? A. No. sir; but we had such great confidence in him we could not believe otherwise.

Q. You still have great confidence in him? A. Of course; we never had any cause to not believe him.

Q. You don't know he ever wrote to his wife except from what he told you? A. Of course, in eighteen years you cannot remember everything, but I am almost positive he did, because he did everything in his power to get her to come.

Q. How do you know that? A. By engaging the rooms and going to see her.

Q. How do you know that? A. Because we had confidence in him and believed him. He never told us a story.

Q. You know he told you he had gone to see her? A. Yes; and he made all arrangements for it.

Q. You never saw her in your life? A. No; only her picture, and he seemed to think a great deal of that.

Mr. MILLAN: I object to the latter part of the answer as inadmissible.

Q. How certain are you that those letters were postmarked Richmond? A. Because the stamp was on all the mail—Richmond, Virginia.

Q. Are you quite certain of that, being eighteen years ago? A. Yes; and a good deal more has come to my mind, if I could tell what has happened.

Redirect examination.

By Mr. FORREST:

Q. This picture that was shown you, purporting to be Mr. Bergheimer's wife, where did he keep it? A. In his room.

Q. Whereabouts in his room, do you remember? A. Hanging up on the wall. I could not tell exactly what part of the room.

It is stipulated that the examiner sign the depositions of witnesses produced on behalf of the complainant for the said witnesses.

CHRISTINA A. FARRELL,

By JOHN A. SWEENEY,

Examiner in Chancery.

Whereupon an adjournment was taken, to meet subject to notice.

86 WASHINGTON, D. C., *October 17th, 1899.*

Met pursuant to agreement of counsel.

Present: Mr. Forrest, solicitor for the complainant, and Mr. Millan, solicitor for the defendant.

Whereupon EMMA P. McCLELLAND, being first duly sworn according to law, deposes and says:

Direct examination.

By Mr. FORREST:

Q. Kindly state your name and residence. A. Emma P. McClelland; No. 1324 10th St. N. W., in this city, and have lived here all my life.

Q. Do you know the parties to this cause—Henry C. Bergheimer and Louise R. Bergheimer? A. I have known the defendant for years, and I know the complainant to speak to.

Q. How long have you known Mrs. Bergheimer? A. I have known her about eighteen years.

Q. During the period of your acquaintance with her, how frequently have you seen her? A. About once a year.

Q. Did she visit you here in Washington? A. Yes, sir; she has visited my house once a year, and has spent sometimes a week and sometimes ten days.

Q. During your period of acquaintance with her have you ever seen her write or received letters from her? A. Yes, sir; I have received letters from her once a week. No; I have never seen her write.

Q. These letters that you received from her, you may state whether or not you ever replied to any of them. A. Yes, 87 sir; we correspond once a week, backwards and forwards.

Q. And that correspondence, I will ask you, has continued for how long? A. Ever since I have been acquainted with her.

Q. You may state whether or not, from such correspondence or otherwise, you are familiar with her handwriting. A. Yes.

Q. Look at the letter and envelope I now show you and heretofore marked for identification J. A. S. by the examiner, and state whether or not it is in the handwriting of the defendant, Mrs. Louise R. Bergheimer.

Mr. MILLAN: I object to this question for the reason that the witness has not shown that she is qualified to answer it, it not appearing that she has ever seen the defendant write or seen any paper properly identified as having been written by her.

A. Yes.

Q. In your correspondence with her, as you have stated, I will ask you whether or no in writing to you she ever acknowledged the receipt of any letters from you.

Mr. MILLAN: This is objected to for the reason that the letters received by the witness from the defendant will for themselves be the best evidence of their contents.

A. Oh, yes; she always answered them and said she had received my letters.

Q. During the time of your acquaintance with Mrs. Bergheimer where has the latter resided? A. In the city of Richmond, with her mother and father.

Q. And, if you can, give the street and number in Richmond to which you addressed the letters to her? A. First, 88 818 Broad street, Richmond, and 517 East Leake street, same city.

By Mr. FORREST: The solicitor for the complainant here offers in evidence the letter referred to and asks the examiner to appropriately mark the same as an exhibit to the complainant's testimony, which is filed and marked Exhibit A.

Mr. MILLAN: I object to this because it has not been identified as the handwriting of Mrs. Bergheimer by any one shown to be qualified to speak on the subject.

Cross-examination.

By Mr. MILLAN:

Q. You have never seen Mrs. Bergheimer write? A. No.

Redirect examination.

By Mr. FORREST:

Q. While she has been at your house, you may state whether or not you have seen any letters that Mrs. Bergheimer has written to her mother or daughter at Richmond. A. I have seen her writing from my house to her mother and to her daughter also.

Recross-examination.

By Mr. MILLAN:

Q. Do you mean to say that you saw her doing the writing, or that you saw letters that she had addressed to her mother? A. I saw her doing the writing.

EMMA P. McCLELLAND,
By JOHN A. SWEENEY,
Examiner in Chancery.

89

FRIDAY, *October 20th, 1899*—3 o'clock p. m.

Met, pursuant to agreement of counsel, at the same place.

Present: Same counsel.

Whereupon an adjournment was taken, to meet on Monday, October 23rd, 1899, at 7.30 o'clock p. m.

MONDAY, *October 23rd, 1899*—7.30 o'clock p. m.

Met pursuant to adjournment last noted.

Present: Same counsel.

Whereupon HENRY CHRISTIAN BERGHEIMER, the complainant herein, being produced as a witness in his own behalf, and who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

Q. What is your full name? A. Henry Christian Bergheimer.

Q. Where do you reside? A. 127 F street N. W., Washington, D. C.

Q. How long have you resided in the District? A. Eighteen years the 3rd of October last.

Q. And during that time what, if any, business or occupation have you followed? A. I have been with Galt Brothers, the jewelers.

Q. You may state whether or not you are the complainant in this case. A. Yes.

90 Mr. MILLAN: I object to the taking of the deposition of this witness on the ground that he is incompetent to testify as a witness in his own behalf in this case under the statutes and rules of practice prevailing in this District, and I give notice that I will at the proper time move to suppress his deposition. I desire that this general objection shall apply to each and every question and answer that may be asked the witness.

Q. What, if any, relation does the defendant sustain towards you? A. She is my wife.

Q. When were you married to her? A. August 2nd, 1876.

Q. Where? A. In Richmond.

Q. By whom, if you recall? A. The Rev. Dr. Schaefer.

Q. Was he at that time the pastor in charge of the church there? A. Yes; the English Luther-n church.

Q. Were you married in the church, or where? A. At my wife's parents' home.

Q. In Richmond? A. Yes, sir.

Q. Prior to your marriage, you may say how long you had known your wife. A. Well, probably about twelve or fifteen years, approximately. I knew her from a child.

91 Q. At the time of your marriage to her what, if any, business were you engaged in? A. As watchmaker.

Q. Working on your own account or for some one else? A. I had a small establishment of my own.

Q. How long had you been so engaged at the time of your marriage? A. About a year and a half, I should say.

Q. And after your marriage where did you live? A. In Richmond.

Q. For how long? A. Until 1878.

Q. Did you after your marriage continue to follow the same business? A. Yes, sir.

Q. In 1878, what happened? A. Well, I failed in business.

Q. While you were living in Richmond during those two years, where did you reside? A. Well, we lived over the store.

Q. When you say "we," whom do you mean? A. My wife and I.

Q. In 1878, after you failed, did you continue to live in Richmond or did you go elsewhere? A. I went to Farmville, Virginia.

Q. How far is that from Richmond? A. I judge it is about sixty miles.

Q. When you went there did your wife accompany you? A. No, sir; she came after I was there and got settled.

92 Q. How long were you there before she came? A. About a month, I should say.

Q. What did you do in Farmville, Virginia? A. I opened a little shop there, watch-repairing and jewelry, &c.

Q. How long were you so engaged in Farmville? A. Until June.

Q. Of what year? A. The same year, 1878.

Q. What happened then? A. Then I left Farmville and came here to Washington and looked for employment.

Q. Why did you leave Farmville? A. I could not make a living there.

Q. Where was your wife living at the time you lived in Farmville? A. She was in Farmville.

Q. Living with you? A. Yes, sir.

Q. Were you boarding there or keeping house? A. Well, we were boarding. We furnished our own rooms.

Q. When you left Farmville what became of the furniture?

Mr. MILLAN: Objected to as immaterial.

A. My wife sold the furniture under an agreement. She was to sell the furniture and keep the proceeds and go to Richmond.

93 Q. At the time that you broke up in Farmville, did you and your wife have any talk or conversation about what you should do and what she should do? A. Yes.

Q. What was that? A. I was to go, and as soon as I could find employment she was to come where I was, as soon as I got settled.

Q. Was that the understanding between you? A. Yes, sir.

Q. You say you left Farmville and came to Washington. What did you do here? A. I could not do anything. I tried to find employment, but it was a dull season of the year, in June, and the summer months are usually dull in our business, and I could not find anything to do.

Q. How long did you remain here? A. I was here three or four weeks.

Q. During the time you were here did you see your wife or have any correspondence with her? A. I had correspondence with her. I wrote to her every other day or two or three times a week; fully three times.

Q. Did you receive any replies? A. Yes; she wrote to me regularly.

Q. You say you remained in Washington how long? A. About a month, as near as I can recollect; between three and four weeks.

94 Q. Where did you go from here? A. To Baltimore.

Q. And what did you do in Baltimore? A. I went there for the same purpose—to try to get something to do in my business.

Q. How long were you in Baltimore? A. Well, I was there until fully the middle or latter part of August.

Q. While you were there did you see your wife or have any correspondence with her? A. I wrote to her regularly and kept her posted of everywhere I went.

Q. Did she reply? A. Yes, sir; I received letters from her regularly.

Q. From Baltimore, where did you go, if to any place? A. I could not get employment in Baltimore, and I was informed of a position in Annapolis, Maryland, and I went to Annapolis.

Q. Did you get employment when you first went there, or how soon after you went there? A. No; I was there for three weeks before I went to work.

Q. Did you go to work then on your own account or for some one else? A. I went to work for some one else, in a store there.

Q. What sort of a store? A. A jewelry store.

Q. After you reached Annapolis, did you have any correspondence with your wife? A. Yes; I wrote to her the very day I arrived there, and informed her just what my prospects were.

Q. Did you receive a reply from her? A. Yes, sir.

Q. How long were you in Annapolis? A. Over two years.

Q. During that time were you employed or not all the time or part of the time? A. I was employed all the time while I was in Annapolis.

Q. Had you good employment? A. I had good employment—I mean after the first three weeks.

Q. While you were in Annapolis where did you stop? A. I stopped at an hotel there.

Q. Kept by whom? A. Kaiser's hotel.

Q. You may state whether or not you stopped there during the whole period you were in Annapolis. A. I stopped there the whole time I was there.

Q. How far is Kaiser's place from the shop where you were employed? A. It is about two squares.

Q. Let me ask you as to the mail facilities there. Did they send the letters around by a postman, or did you have to go to the post-office after them? A. We had to go to the post office. Afterwards they were sent to the hotel.

Q. Whatever mail was delivered, was it delivered at the place you were employed or the place where you were boarding? A. Different. Sometimes at the hotel I would find it when I came home—that is, the mail. Parties would send down to the office and get what mail there was for the different boarders that stopped at the hotel. Some mail I got myself. I would pass by there and call for it in the evening after my working hour.

Q. Now, at any time when you were in Annapolis did you send for your wife to come there? A. Yes, sir.

Q. Do you remember when that was in respect to the time you first got employment? A. Oh, just as soon as I got settled; five or six weeks afterwards.

Q. Have you any copies of any letters you sent? A. No, sir; I have none.

Q. How often while you were in Annapolis do you think you wrote to her? A. Well, I wrote to her three times a week.

Q. Look at the letter I now show you, which has heretofore been offered in evidence, and which is also marked by the examiner for identification "J. A. S." and tell me whether or not that is in the handwriting of your wife (handing letter to witness). A. Yes, sir; it is.

Q. Look at the envelope I also show you and tell me whether the address is in her handwriting (handing envelope to witness). A. Yes; I had a post-office box numbered 89, and they only put 89 on the envelope. I am pretty well known there.

Q. Did you not receive the letter through the mail, Mr. Bergheimer? A. Yes, sir.

Q. Where were you at the time you received it? A. I was at Kaiser's hotel. I remember this letter very well.

Q. In what city? A. Annapolis, Maryland.

Q. Did you answer it? A. Yes, indeed; that very night. I got it in the evening, about seven o'clock, coming home to dinner.

Q. After its receipt you may state whether or not you ever wrote to her to come to Annapolis. A. After that?

Q. Yes. A. Oh, yes; often; several times.

Mr. FORREST: Solicitor for complainant here calls on the solicitor for the defendant for any letters and all letters that may be in the possession of the defendant written by the complainant to her while he was in Annapolis, Maryland, and in the absence of the production of such letters the complainant will offer secondary proof of the contents of the same.

Mr. MILLAN: Counsel for defendant states that he is unable to reply to this demand until he has had an opportunity to 98 communicate with his client, who is not present, to ascertain whether such letters ever existed, and, if they ever did, whether they are now in existence. But I will take steps at once to inform myself by communicating with my client.

Mr. FORREST: Solicitor for the complainant says that in the absence of such letters he will offer secondary evidence as to their contents, agreeing that such evidence may be suppressed in the event that such letters are produced.

Q. Do you remember, Mr. Bergheimer, what you wrote to your wife, if you did so write, at Richmond, Virginia, to which the letter that I showed you is in response?

Mr. MILLAN: Objected to as incompetent.

A. I wrote to her and requested her to come where I was, as I had made arrangements to settle there, and I would like her to come and live with me and join me.

Q. What arrangements at that time had you made? A. I made arrangements with the proprietor of the hotel there that I could get quarters there, which he said would be furnished more reasonably than I could if I would go to housekeeping. He was accommodating and wanted to give me nice, comfortable quarters, which he showed me and offered me, and I selected my own furniture, of course, which was to be placed in the rooms. I was to furnish the rooms.

Q. After the receipt of the letter to which I have called your attention, do you recall the contents of your reply?

99 Mr. MILLAN: Objected to as incompetent.

 A. To a word I could not.

 Q. Give us your best recollection. A. I wrote to her that I was surprised at receiving such a letter, and I wanted to know what the trouble was, and why she did not intend to come, or words to that effect, and I thought it was the duty of a wife to come with her husband under all circumstances if he tried to do right with her, or words to that effect.

 Q. In response to these communications that you wrote to her, did she ever come to Annapolis? A. No, sir. She never wrote, even. She did not write any letters. I wrote several after that.

 Q. Well, at what time, if at all, did you leave Annapolis for Washington? A. You mean to go to Richmond or come here?

 Q. First to come here. A. I came here in 1881. I left Richmond—in July, 1879, I left Annapolis for Richmond, and went to have a personal interview, which she denied.

 Q. A personal interview with whom? A. With my wife.

 Q. Did you have such an interview? A. No, sir.

 Q. Where did you go for that purpose? A. To her parents' home.

 Q. What occurred when you went there? A. She refused to see me.

100 Q. How do you know that? A. Well, her mother and her uncle were present and they vouched for it.

 Mr. MILLAN: I object to any statement made by the uncle or mother out of the presence of the defendant.

 Q. Did they come to the door when you went there? A. Well, they had a plumbing establishment, and it was down in their store or shop. I went there. That is as far as they would permit me to go.

 Q. Did you ask for her? A. Yes, sir.

 Q. Who answered your request? A. Her father first. After I had a conversation with him he said he would turn the matter over to Mrs. O'Donnell, his wife.

 Mr. MILLAN: I object to what the father said.

 Q. If there is anything else, go ahead and state it. A. I requested to see my wife, and they told me no. She came down and refused, and said I could not go up.

 Mr. MILLAN: I object to anything her mother said.

 Q. Well, on your visit to Richmond that time, did you see your wife at all? A. No, sir.

 Q. Did you see your children? A. Yes; the second visit I saw the children.

 Q. Where were they when you saw them? A. They were at the house. I made a second visit.

101 Q. Did you see your wife then? A. No, sir; I met with the same result.

Q. Where did you see the children? A. Down in the shop. The servant brought them downstairs.

Q. Did you make any other effort to see your wife? A. Not after that.

Q. How long did you remain in Richmond on the second occasion? A. I remained until that night. I left that night and went back to Annapolis, where I was employed.

Q. Since you came to Washington, in 1881, have you ever since remained here? A. Ever since.

Q. To your knowledge, has your wife visited Washington? A. Oh, yes; a number of times.

Q. Did she know where the store is where you are employed? A. Yes, sir.

Q. Has she ever visited there? A. No, sir.

Q. Has she ever communicated with you in any way since she has been in the habit of visiting Washington? A. Not until 1891. I think it was somewhere about then.

Q. What happened then? A. She requested an interview with me.

Q. Did you see her? A. Yes, sir.

102 Q. Whereabouts? A. I met her on the Avenue right below the store, and we walked over to the Smithsonian grounds with the children.

Q. What took place there? A. Well, I wanted to see what she had to say, and the only request she made was that she wanted to know if I had any money for them.

Q. Did she say anything about returning to you? A. Not a word.

Q. Was the subject broached by either of you? A. No, sir.

Q. Outside of that interview, have you ever had any other interview with her in Washington? A. I don't think I have.

Q. Now, in respect to the children, have you ever received any calls from them in Washington? A. Yes; they have called on me.

Q. How many children are there? A. Two.

Q. What sex? A. Boy and girl.

Q. And the boy is how old now? A. Twenty-two years.

Q. And the young lady is how old? A. She must be twenty.

Q. In her answer to your bill of complaint the defendant, 103 your wife, says that she denies that you ever wrote to her after leaving Farmville, Virginia, in 1879, that you were prepared to and would support her and the children. What have you to say to that? A. I think that letter would answer that (Exhibit A).

Q. What do you say to that statement? Is it true or not? A. It is not true.

Q. She also says that it is not true that she ever wrote to you refusing to come to Annapolis. What do you say about that?

MR. MILLAN: I object to that as leading and suggestive, and suggest to counsel that the proper method of examination would be to

interrogate the witness as to what the facts are in regard to a certain occurrence, and not to state what his wife has stated and give him an opportunity to make a categorical denial.

A. She did write refusing to come to me.

Q. She also says in her answer that it is not true that she ever wrote to you saying she would not leave the city of Richmond. What have you to say about that?

Mr. MILLAN: Same objection.

A. She did refuse to leave.

Q. Did she ever write you to that effect? A. Yes, sir.

Q. She further says in her answer that she denies that she ever refused to see you or have any conversation with you upon your calling on her to see her and the children in Richmond. What have you to say about that?

104 Mr. MILLAN: Same objection.

A. She did refuse to see me when I called.

Q. Further on in her answer she says that while in Richmond you became dissipated and careless soon after marriage; was addicted to gambling, stayed out frequently all night, and thereby ruined your business, resulting in failure. What have you to say to that?

Mr. MILLAN: Same objection.

A. The way she puts it, no; I did not.

Q. While in Richmond were you ever addicted to gambling in any form? A. I have gambled.

Q. While you were gambling in Richmond did your wife know it while she was there? A. Always; I never was absent a moment from my wife that she did not know where I was.

Q. And during your married life, I will ask you whether or not there was ever any trouble or family quarrels or harsh words passed between you. A. We never had any words.

Q. She also says in her answer that you would pawn your own property and the property of customers left with you to be repaired. What have you to say about that?

Mr. MILLAN: Same objection.

A. I pawned my own property, and I pawned watches left for repair that had been repaired and been there for a long time.

105 Q. For what purpose did you pawn your own property? A. To get some means to exist, trying to live, and hoping for better prospects.

Q. She says in her answer that in Farmville, Virginia, you continued the same course of living to which I have referred. What have you to say about that?

Mr. MILLAN: Same objection.

A. I did not.

Q. In her communications to you while in Annapolis, Maryland, you may state whether or not she refused to come there, alleging for reason of such refusal that you did not send her money to come.

Mr. MILLAN: Objected to as leading and suggestive.

A. No, sir; she did not.

Q. She also says in her answer that about ten years ago you walked into the dry-goods store of Breeden & Talley, of Richmond, Virginia, where she was then employed as a saleswoman; that you stayed but for a moment and started for the door when she begged you for an interview, which you refused, saying that you had to get to the train for Washington. What have you to say to that statement?

Mr. MILLAN: Same objection.

A. I don't believe I was in Richmond ten years ago.

Q. What have you to say to that statement? A. No, sir; I did not.

Q. She also says in her answer that she has written to you a number of times, and on several occasions had been to Washington and sent notes to you requesting an interview, but you never answered or appeared where requested to meet her. What have you to say about that?

Mr. MILLAN: Same objection.

A. She wrote recently. In the last year or so she wrote one or two notes, when she informed me where she was stopping with some friends.

Q. Did she in those notes request an interview? A. Yes, sir.

Q. Did you see her? A. No, sir.

Q. She says further in her answer that you called at her mother's house about nineteen years ago, where she was sick in bed, and on that occasion you saw the children, but expressed no desire to see her. What have you to say about that? A. I expressed a desire and went expressly to see her and the children. I went there twice. I made a second attempt and she refused both times.

Q. How often have you seen your son since you lived in Washington? A. Since 1891 I saw him several times.

Q. Did he ever on any occasion have any conversation with you about arranging to bring your wife and children to live with you?

Mr. MILLAN: Objected to as clearly incompetent.

A. No, sir.

Q. Have you at any time ever contributed anything to the children; and, if so, in what amount? A. Different amounts. One time, for a year or more, I sent a check every month.

Q. How much? A. From \$10 to \$35. Some checks were for \$10 and from that up, and some were \$35.

Q. Do you remember any occasion when your daughter called to see you at your home? A. Yes, sir.

Q. In reference to that occasion let me ask you whether or not you were at that time confined to your bed or whether you had been sick. A. It was about the first day I was out. I had been very ill.

Q. For how long? A. I was in bed fully six weeks, and I was in the house fully two months.

Q. What were you suffering with? A. Typhoid fever.

Q. What happened on the occasion of your daughter's visit to the house? A. She came there to see me, I understand, but I was advised by the physician to see no one. He allowed me to go out that day, and I went down to the store only for a short time, perhaps half an hour or twenty minutes, and they gave me some information that upset me very much.

Q. You need not tell what that was. A. And I went home and left orders with the people in the house that I was going up to my room to rest, and they saw I was very weak, and I told them I 108 didn't want to be disturbed, and I would not be in for any one; no matter who called, I would not be in to see them; and while I was in my room I heard some screaming and noise downstairs which roused me up, and I went to the head of the steps and heard it was my daughter. I went down then to see who it was, to be sure it was she, and when I got there I told her from the information I had received that day down at the store that I did not care to see any of them, and she would kindly communicate that to them when she returned. Nothing more passed between us excepting creating a scene and crying, &c.

Q. At that time, did you lay your hands upon her? A. No, sir.

Q. Did you push her out of the door? A. No, sir.

Cross-examination.

By Mr. MILLAN:

Q. On this occasion when your daughter called there at the house, did you tell her not to come to the house again? A. No, sir.

Q. You did not tell her never to put her foot in the house again? A. I don't think I said that.

Q. Did you use any profane language on that occasion? A. No, sir.

Q. You did tell her to tell the rest of the family, meaning her mother and brother, you did not want to have anything 109 further to do with them? A. I didn't care to see any of them.

Q. And did not care a damn for any of them? A. No, sir; I did not say that.

Q. Did you order the same lady out of the house and shut the door after you had gotten your daughter on the outside? A. No, sir.

Q. Now, you mean to say that after you had gotten well and gotten up from your spell of typhoid fever so as to be able to go to the store the physician advised you not to see any one? A. Yes.

Q. After you had gotten in a convalescent condition? A. Yes. I only went down for a short while, a little walk.

Q. Who was your physician? A. Dr. Gladdon.

Q. Where is he now? A. He was in North Carolina the last I heard of him.

Q. To whom did you send those checks you said you sent down there? A. I sent them to my son. They were payable to him.

Q. When was that? A. Previous to my sickness.

Q. What year was that? A. 1896, I think.

110 Q. During the year 1896 you were sending him checks every month. Is that what you mean to say? A. Yes, sir.

Q. When did you begin that, about? A. I don't know the exact date.

Q. About when? A. About 1895, I should say.

Q. The latter part of 1895? A. I think it was.

Q. And you kept it up how long? A. For fully a year.

Q. And then you stopped about the latter part of 1896? A. I did.

Q. What led you to begin sending those checks? A. I wanted my son to learn what he could, and helped him all I could afford.

Q. What led you to stop sending them? A. His actions were such towards me that I saw I could not gain his affections, trying it by every means, and he wrote letters to my firm, trying to raise money from them and larger sums and sums I didn't think a boy of his age should have.

Q. You sent the checks to him? A. To him; payable to him.

Q. And mailed them to him? A. And mailed them to him.

Q. And they were for him personally? A. For him personally.

111 Q. You say some of them were for \$10 and some for \$35, and from that up? A. No; I said from ten dollars to thirty-five dollars.

Q. How many were for ten dollars and how many were for thirty-five dollars? A. Well, I guess the most of them were for ten dollars.

Q. Now, during the twenty years you have been separated how much did you contribute towards the support of your wife during that time?

Mr. FORREST: Objected to as immaterial and incompetent for the reason that the defendant wilfully deserted the complainant without cause and he was under no obligation to contribute anything towards her support.

Mr. MILLAN: Counsel for the defendant replies to this that that is the allegation of the bill which complainant has utterly failed to prove up to this time.

Mr. FORREST: Solicitor for complainant says that that is exactly what the proof shows, and he has thus a warrant for the objection, and that is the reason for his making it.

Q. During the time you have been separated from her how much

did you contribute towards her support? A. As soon as I got employment at Annapolis the first money I drew I sent her from it the small sum of \$5. Then, from that time on, I continued to send her such sums as I could out of the small salary I got, besides giving her presents and other things she needed for herself and her children.

112 Q. How long did you continue that? A. Until she refused positively to come; till I got that letter (indicating Exhibit A).

Q. Then, after the receipt of this letter, which is dated March 11th, 1879, you ceased to contribute anything towards her support? A. Yes.

Q. And since that time you haven't contributed or offered to contribute anything towards her support? A. Nothing to her support unless she came with me.

Q. Have you offered since that time, March, 1879, to support her, either conditionally or unconditionally? A. I wrote her on April 15th a registered letter, which she signed for, and I have the registration or post-office receipt, requesting her to come with me; that I had all arrangements made and representing what I said before.

Q. That was the 15th of April of what year? A. 1879.

Q. Why did you have the letter registered? A. Because she refused to answer any of my letters I wrote to her, and when I received this one I thought I would register a letter, so as to have some showing that it was delivered all right.

Q. So as to lay the foundation for a divorce suit? A. No, sir; I never thought of such a thing.

Q. Why is it you have been thinking twenty years about it?

Mr. FORREST: That is objected to as immaterial and irrelevant.

A. I didn't have any reason for it. Personally, I didn't care to have one.

Q. Why is it you care for it now? A. Because I have tried every means possible until the time I was ill—till I learned then how they acted towards me at the establishment I was at so long. They went there to find out what I was worth—how much I had and how much I was earning—to see what money they could get from me—at the firm of Galt & Galt. That set me against my wife.

Q. That is the firm where you were employed? A. Yes.

Q. And where you are employed now? A. Yes. They had written there to find out what they could get, both of them—both the members of the family, individually and generally.

Q. You didn't let them know what you were getting? A. Let who know?

Q. Your family. A. No; I had no occasion to.

Q. You haven't let them know? A. I have no occasion in the world to let them know.

Q. Since you have spoken of your employment there, I will take this opportunity of asking what you are getting there.

114 Mr. FORREST: That is objected to as not cross-examination, and the witness is at liberty to refuse to answer, if he so desires.

A. Under advice of my attorney I refuse to reply.

Q. Do you get a salary there or have you an interest in the firm or both?

Mr. FORREST: Same objection and same suggestion to the witness.

A. I refuse to answer the question.

Mr. MILLAN: I ask to have these questions certified to the equity court for its decision as to whether he should be compelled to answer.

Q. How long has it been since you had this spell of sickness you spoke of, when your feelings underwent a change towards your family? A. It was last March two years ago. I was taken sick March 4th, McKinley's inauguration.

Q. And after that you made up your mind you would begin these proceedings? A. Not directly after. I waited quite a while.

Q. Something over two years? A. Yes.

Q. And the only reason you had for beginning these proceedings after all those years is the fact that what they did when you were sick made you angry? A. After waiting for all those years trying to get the affection of my children and after growing to the age they had reached I thought it was time for me to take that step and not to worry, as I had been doing through all my life.

Q. The children had been with their mother during all 115 those years? A. During all those years; yes, sir.

Q. Now, between 1879 and 1897, the time you had this spell of sickness, what effort had you made to try to get your wife to come back to you or to get your children to live with you? A. I didn't make any after I went down in 1879, July, when I went there to see them, and saw there was no use. But I did try by suggestions to members of their family and others to get them to permit my son to come here and place him in any institution they would like and I would pay for his education. I suggested Georgetown college.

Q. Did you ever make that suggestion to your wife? A. I didn't see her.

Mr. MILLAN: I object to the statement of the witness as to what he said to other people as incompetent and not responsive to the question.

A. (continued). I made it to her sister.

Q. Where did you leave your wife when you left Farmville to go to Washington? A. I left her in Farmville.

Q. Did she know you were going to leave? A. Oh, yes; it was mutually agreed.

Q. Where was she staying? A. I left on a Sunday and she was to go home on Monday to her parents after she received the money for the furniture.

Q. Do you know where she did go and how she got there?
116 A. She wrote to me that she arrived home safe.

Q. Do you know how she got the means to get there? A. She had \$55 from the set of furniture that she sold. She got that the day after I left.

Q. In this letter which you identified as having been received from your wife she uses this expression: "If I am not to ask you for money, I would like to know who has," indicating you had told her not to ask you for money. Is that a fact? A. I never did; no, sir. She wrote that letter after I had sent her money, but the sums were not large enough; that was the trouble; but I was earning a very small salary at that time.

Q. What salary were you earning at that time? A. Well, I earned first \$12 and then I got \$15 a week; some weeks less and some weeks more, but not more than fifteen.

Q. She uses this expression: "Henry, you forget what is due to a wife; you forget your past, but I do not." Do you know what she had reference to there? A. I don't know what she referred to.

Q. She uses this expression: "Oh, would to God I had never gone to Farmville!" Do you know what special regret she had for going there? A. I think I know what she refers to there, but I will not state it. It is a personal matter. It was no difficulty between us at all. It was just the result of consequences.

117 Q. She also uses this expression: "But why did to cover your shameful act, and now the parties are in need of their money, and I have suffered enough for what?" What shameful act had she reference to there? A. Because I left Farmville owing money, as I had in Richmond. I think it was because I failed in business. There was no other shameful act that I did.

Q. Would the fact of a man's failing in business be looked upon as a shameful act? A. It is often looked upon that way. Some people fail with something, but I failed with my bills.

Q. And you think there was nothing else she had reference to? A. I am sure there was not. There could not be.

Q. You don't know of your own knowledge that your wife refused to see you when you went down there in July, 1879, except what somebody else told you? A. Well, her parents and her uncle said that.

Q. You need not tell what her uncle or parents or anybody else said except her? A. I could not see her.

Q. You spoke of the servant bringing the children down. Which servant was that? A. Her servant.

Q. Your wife's servant? A. Yes.

Q. She was keeping a servant? A. I suppose it was her servant or her mother's. We had a girl. It was the same girl we had.

118 Q. The same girl you had in Farmville? A. No; in Richmond.

Q. But you had not been living in Richmond? A. No; but she had the same girl when she went back.

Q. The girl once lived with you? A. Yes.

Q. Do you know anything about the present whereabouts of this girl? A. No; I haven't seen her since that day.

Q. Do you know her name? A. No, sir; I have forgotten it.

Q. Is she a colored girl? A. A colored girl; yes.

Q. How many times since 1879 have you seen your wife; I mean to speak to her? A. I saw her to speak to her only this once when I had any conversation. I have seen her numbers of times passing the store and in different parts of the city.

Q. And on that occasion she came to the store with the children and you walked over to the Smithsonian grounds? A. She did not come to the store.

Q. Where did you meet her? A. I met her on the Avenue.

Q. Was it by agreement? A. Yes; she asked me if I would meet her, and I did.

Q. She had also written you a number of other notes? A. Not before that.

Q. How long ago was this meeting you speak of? A. About eight or nine years ago; or something like that.

119 Q. The subject of resuming your relations as husband and wife was not discussed at that meeting? A. No, sir; it was not mentioned.

Q. That was the first time you had seen her since 1879? A. Yes, sir; to have a conversation with her.

Q. And you didn't ask her to come back to you? A. No, sir; not at that time.

Q. And it was after that that you began getting these other notes from her, was it? A. Yes; a long while after that.

Q. How long after? A. Probably three or four years, or two or three years; I would not say positively; I cannot remember.

Q. Notes written from her in this city? A. Yes; she was in the city.

Q. About how many altogether would you say, according to your best recollection? A. Well, I don't think there were more than perhaps two. Two is all I can recollect. Surely I don't think there were more than that.

Q. And you never replied to either of them? A. No, sir; I didn't reply to either one of them.

Q. The only request that was made of you on the occasion of this meeting when you went to the Smithsonian grounds was for money, I believe? A. Yes.

Q. Who made that request; your wife? A. Yes.

120 Q. Did you give her any money? A. No.

Q. Declined? A. I did not decline. I just ignored the question entirely. I said that is all they want of me.

Q. You were able to give them money at that time? A. I don't know whether I was or not.

Q. You were getting a good salary? A. I don't know whether I was getting a good salary or not at that time.

Q. You know what you were getting?

Mr. FORREST: These questions are objected to on the same grounds as to similar questions asked previously.

A. Different years I got different salaries. I don't recollect what my salary was at that time.

Mr. FORREST: Same objection.

Q. It varied according to the volume of business? A. I got more salary one year than I got another.

Q. Your counsel has instructed you not to answer the amount of salary you are getting. I will put the question in this form: Has there been at any time during the last nine years a time when you could not have been able to give your wife some money if you had been so inclined?

121 Mr. FORREST: That is objected to because the defendant wilfully deserted and abandoned the complainant, and he was under no obligation to pay her any money, no matter what his position was or whether he was able financially to give her any assistance or not.

A. Yes; during my illness I was unable to give any.

Q. That is the only time you can think of? A. Yes; at present. I borrowed money before that, and if I paid my debts I don't think I could have given money to her.

Q. Mr. Bergheimer, you say it is not true that you ever saw your wife in the store of Breeden and Talley, in Richmond? A. I don't remember seeing her in any store. I didn't visit any store there.

Q. Were you ever in that store? A. No, sir.

Q. Then she is mistaken when she says that you came in there? A. She is mistaken about that.

Q. Have you ever visited Richmond since 1879? A. Well, I was there on two different occasions. I was there when I went to see her and two other occasions—that is, during the illness of my mother and father. I buried both of them in Richmond.

Q. I am speaking since 1879, since that time? A. Yes; since 1879.

Q. You have been there twice? A. Yes; after calling to see her I was there twice.

122 Q. When were those visits made? A. Well, they were about four years ago, and possibly eight years ago. I think those are the dates. My mother died 8 years ago and my father died about four years ago.

Q. And you are quite sure that on neither of those occasions did you go to the store where your wife was employed? A. No, sir; I did not; not at any time. I had my hands full attending to the affairs of my parents which had to be settled, and then I returned. I left immediately after that or the day after.

Q. Mr. Forrest asked you a question in reference to this allegation here in the answer of Mrs. Bergheimer to the effect that you became addicted to gambling and frequently stayed out all night, ruining your business and resulting in failure; and you answered

him, as I recollect, that it was not true the way it was put? A. Yes, sir.

Q. To what extent was it or is it true? A. Well, I did gamble and I drank, but never to excess.

Q. You stayed out all night? A. Not during the time I was in business, and if I was out at any other time she knew exactly where I was. She knew where to find me at any moment, night or day.

Q. He also asked you a question in regard to your pawning the property. I will get you to repeat what it was you said about that. A. I pawned my property and any watches I had. There are some of them left in most establishments and people never call for them.

They don't amount to anything.

123 Q. You mean by that watches left with you and left overtime and not called for? A. Left to be repaired and left overtime.

Q. It is not a fact, then, that you made that same disposition of property that was left with you and which was afterwards called for? A. I was out of business. It was the last few months of the business.

Q. Now, is it not a fact that just what Mrs. Bergheimer is talking about in this letter when she speaks of your contemptible act is that you had been making this disposition of other people's property? A. No, sir; I don't think so.

Q. Is it not a fact that she subsequently used her own money and some of the money she earned to pay off some of those things? A. No, sir.

Whereupon, without concluding the cross-examination of this witness, an adjournment was taken to meet subject to agreement of counsel.

124 FRIDAY, October 7th, 1899—1 o'clock p. m.

Met pursuant to agreement of counsel.

Present: Same counsel.

Whereupon HENRY CHRISTIAN BERGHEIMER was produced for further cross-examination—

By Mr. MILLAN:

Q. Where is it you reside at present? A. At 127 F street N. W.

Q. Is this the same place you were living at the time you had these spells of sickness you testified about? A. Yes, sir.

Q. And the same place where your daughter came at the time she was told to go away? A. The time she came there; yes; the same house.

Q. Did you keep the house or board there? A. I boarded there, roomed there.

Q. How long have you lived at that place? A. About eleven years, I should say, approximately.

Q. Who keeps the house? A. Mrs. Kaiser keeps the house.

Q. The same Mrs. Kaiser you boarded with in Annapolis? A. No; a sister-in-law of hers.

Q. I have forgotten whether I asked you this: During all the time you have been separated from your wife, have you contributed any money at all to her personally? A. Not after I left Annapolis.

125 Q. How much and how often did you send her money from Annapolis? A. I don't recollect how often or just how much. They were not large sums, but they were all I could spare, from five dollars up.

Q. About how many times did you send this money? A. Several times, until she refused me.

Q. Until this letter you put in evidence the other night was written? A. Before that she had refused one time. The sum was too small for her.

Q. And after that letter you didn't send her any money at all? A. No; not at all.

Q. About what were you making there in Annapolis? A. Well, I made from \$12 to \$15 a week.

Q. During all the time you were there? A. That is the highest, \$15.

Q. Where else have you lived in Washington besides the place you now live? A. Well, when I first came here I slept at the store for about three or four years, but I don't recall exactly the time.

Q. After that where did you go? A. I boarded with Mrs. Kaiser one year. She had a spare room and I boarded on 4th street.

Q. The same lady? A. This same lady. She was then 126 living on 4th street, but I don't recollect the number. It was 4th street N. W., near Massachusetts avenue.

Q. Since the writing of this letter which was put in evidence here, have you ever authorized anybody or directed anybody to make an effort to get your wife to come back to you? A. No, sir; I have not.

Q. You haven't asked her to come back to you since then? A. I have called on her since I got that letter.

Q. When and where? A. At her house.

Q. Immediately after? A. No; I wrote several more letters after this, and on the 3rd of July, 1879, about the 3rd or 4th of July, I called on her.

Q. But since that you never requested her to come back, and never told anybody else you wanted her to come back? A. Not since I went there on the 4th of July.

Q. Why didn't you take steps to communicate your desires to her? A. Because every step I had taken during that whole year, 1879, and every request I made had been refused.

Q. The time you saw her on the Avenue and walked over to the Smithsonian grounds, why didn't you make that request then? A. That was too long afterwards. That was eleven years afterwards. That was 1891, I think.

127 Redirect examination.

By Mr. FORREST:

Q. In your cross-examination, in answer to a question put to you by the solicitor for the complainant, you stated that you made suggestions to the sister of the defendant about your boy's education. What sister was that—what was her name? A. I think it was Annie. There were two of them, but I think it was Annie O'Donnell.

Q. You say you think there were two there? A. Yes; there were two.

Q. Does that sister live in Richmond? A. Yes, sir; she lives in Richmond.

Mr. MILLAN: I object to any testimony concerning what the witness may have told the sister of the defendant, unless it be shown that that statement was actually communicated to the defendant.

Q. And how near does she live to your wife in Richmond, do you know? A. Annie lives in the house with her sister, my wife. The other one lives, or did live, about a block or so away. I recollect she lived about a block away from the house where my wife lived.

Q. Now, you say you met her here in Washington in response to a note she sent you. Have you that note? A. No, sir; I have not.

Q. In that note did she state for what purpose she wanted 128 to see you? A. No, sir; she did not.

Q. At that time did you know where Mrs. Bergheimer was stopping in this city? A. She was stopping in this city with Mr. and Mrs. McClelland.

Q. And you say that during the conversation you had with her in the Smithsonian grounds on that occasion she made a request for money? A. Yes, sir.

Q. Did she state for whom the money was desired? A. For herself and children.

HENRY C. BERGHEIMER,
By JOHN A. SWEENEY,
Examiner in Chancery.

Mr. FORREST: Solicitor for the complainant here announces the testimony-in-chief closed, with the exception of one witness whose testimony he desires to take in Richmond, Virginia, to prove the marriage between the parties, which, with the consent of the solicitor for the defendant, we will take when the solicitor for the defendant takes his testimony there.

129 In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER
vs.
LOUISE R. BERGHEIMER. } Equity. No. 20447.

Testimony taken at Richmond, Virginia, on behalf of complainant, before me, pursuant to order passed in this cause appointing me as commissioner therefor.

Met, pursuant to agreement of counsel, at the office of Messrs. Allan & Allan, in the Shafer building, corner of 10th and Park streets, Richmond, Virginia, for the purpose of taking testimony on behalf of complainant in above-entitled cause, Saturday, Nov. 25th, 1899, 10 o'clock a. m.

Present: Mr. Forrest, on behalf of complainant; Mr. Edgar Allan, Jr., on behalf of defendant and petitioner in cross-bill, and the co-complainant and defendant in cross-bill, and the defendant and co-complainant in cross-bill in person.

Whereupon THOMAS B. MACKIE, a witness produced on behalf of complainant, being first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

130 Q. What is your business? A. I am in the tobacco business as manager for P. H. Mill & Bro.—the Continental branch now.

Q. How long have you lived in Richmond? A. I have been living here forty-six years.

Q. Do you know the parties to this controversy—Henry G. Bergheimer and Louise R. Bergheimer? A. Yes, sir.

Q. Do you remember when they were married? A. Yes.

Q. When was it, to the best of your knowledge? A. Some time in the first of August, 1876.

Q. Were you present at the marriage? A. Yes, sir.

Q. Where did it take place? At Mrs. O'Donnell's, on Broad street.

Q. Who is Mrs. O'Donnell? A. She is the mother of Mr. Bergheimer's wife.

Q. By whom was the marriage ceremony performed? A. By Dr. Shafer.

Q. Was he a regularly ordained pastor of any church? A. Yes, sir.

Q. What church? A. The Lutheran church, on 7th street between Broad and Grace streets.

Q. Was the marriage ceremony performed according to the rites of the Lutheran church? A. Yes, sir.

Mr. ALLAN: No cross-examination.

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Stipulation.

It is stipulated and agreed by and between counsel that the commissioner may sign the deposition for and in the place of this witness.

THOMAS B. MACKIE,
By JOHN A. SWEENEY, *Examiner.*

Mr. FORREST: I again offer in evidence a letter purporting to be from the respondent to the complainant under date of March 11th, 1879, from Richmond, Virginia, to Annapolis, Maryland, marked Exhibit A.

Mr. FORREST: The complainant here announces his case closed in chief.

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EXHIBIT A.

RICHMOND, *March 11th, 1879.*

DEAR HUSBAND: I received your letter yesterday and I will try to answer it though, I do not know what to say—to a letter written by one who I thought Loved his wife and children. What do you mean by saying I bull-doze you, I know I send you several postal cards for I had no money to write a letter and I owe enough stamps &c, and if I am not to ask you for money, I would — to know who, has. I did not ask you to send me a list of what you spend, and I am very sorry you send me anything christmas, for I have never been able to put the scissors in my dress and what you send did not amount to 25.00 as you say—and for a ring—3.50 you never send it to me, or the letter did I get, Now henry, I have told you over and again that I would never leave R. and you need not ask me again and you need not—to deman me for I am my own counsel, and do you think you are doing a *husband* duty no not by fare, henry you forget what is due to a wife you forget *your* pass but I *do not* Oh. would to God I had never gone to *farmville* But why did to cover your Shamefull act and now the Partes are in need of their *money*, and I have suffered enough, for what *Pleasure* and enjoyfull have I seen none, for when I art to be in *Pleasure* I had to stay *home* for you to go and, not only do my heart know the neglect you have done but *others* and you show a great deal of Love for your *child* none what ever. henry to close my letter short for my Boy is sick again I will say to you I will stay *where* I am I

have a good *home* and I can get all I want, and you said you
133 would not listen to any Proposition so I can tell you no *more* and if you wish to see me you can come and work here but to leave R again *never*. I have long studied your *interest* and you would never do as I asked and I have been a true and faithfull wife, henry I dont want you to think their is any third Party in my *affairs* for I can conduct them my self You said you would not come here *Blind*—how do you expect to get a situation unless you try in *person* and if you want to you can — something to do—I will

close for I am nursing my Darling children Dany is quite sick
again hoping this will find you well

I remain

YOUR WIFE.

(The following is on envelope:)

{ Postmark: Richmond, Va., }
 Mar. 11.

H. C. BERGHEIMER, Esq.,
 89 *Annapolis, Md.*

134 In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
 vs. } Equity. No. 20447.
 LOUISA R. BERGHEIMER, Defendant. }

DISTRICT OF COLUMBIA, ss:

I, John A. Sweeney, an examiner in chancery of this court, do hereby certify that, pursuant to the order of court appointing me to take testimony hereina, the foregoing depositions of William L. Pfeiffer, James L. McLeod, John P. Preller, John A. Hill, Emma M. Schrayer, and Christina A. Farrell, Emma P. McClelland, Henry C. Bergheimer, and Thomas P. Machie were taken down by me in the presence of and from the oral statements of the said witnesses at the times and places designated in the captions thereof, and after the same were reduced to typewriting they were subscribed by me for the said witnesses by consent of counsel, the said witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties hereto or in any manner interested in the result hereof.

JOHN A. SWEENEY,
Examiner in Chancery.

135 *Testimony on Behalf of Respondent.*

Filed Dec. 26, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
 vs. } Equity. No. 20447.
 LOUISE R. BERGHEIMER, Defendant. }

Testimony taken at Richmond, Virginia, on behalf of respondent and petitioner in cross-bill.

Met, pursuant to agreement of counsel, at the office of Messrs. Allan & Allan, in the Shafer building, corner of 10th and Park streets, Richmond, Virginia, for the purpose of taking testimony on

behalf of complainant in cross-bill and defendant herein, and pursuant to order of court appointing me as commissioner therefor, on Saturday, November 25th, 1899, at 10 o'clock a. m.

Present: Mr. Forrest, on behalf of complainant; Mr. Edgar Allan, Jr., on behalf of respondent and petitioner in cross-bill, and the said parties in person.

Whereupon DANIEL O'DONNELL, a witness produced on behalf of respondent and petitioner in cross-bill, and who having been first duly sworn, testified as follows:

136 Mr. FORREST: Before the examination of the witnesses is commenced I request that all witnesses who are now in the room be excluded, except the witness who is on the stand and the parties to this controversy, it being evident to counsel that all the witnesses now present are of the family of the defendant, and therefore it is no more than proper that during the taking of the testimony the witnesses should be excluded from the room, with the reservation before stated.

Mr. ALLAN: Counsel for the respondent admits this right, and all witnesses, with the exception of the present witness now on the stand and Mrs. Bergheimer, are requested to leave the room (which request is complied with by the witnesses).

By Mr. ALLAN:

Q. You are the father of the defendant, I believe? A. Yes, sir.

Q. How long have you known the complainant, Mr. Bergheimer?

A. Well, I don't know. I don't remember when they were married; I don't remember the year.

Q. About how long? A. I remember him when he was a little boy. I remember him when he lived right behind here on 9th street.

Q. He married your daughter, I believe, in 1876? A. I don't know, sir, what year it was in. I know I saw them married in my parlor up over the store on Broad street. I was at the wedding.

Q. After they were married in what business was Mr. 137 Bergheimer engaged? A. In the jewelry business.

Q. Where? A. Well, he had a little place on the corner of 13th and Franklin. I have been in the store, and I was proud to see the store. He had it nicely fixed up.

Q. After he was married he continued in the jewelry business, I understand you to say? A. Yes, sir.

Q. Do you remember whether he ever went to Farmville to live? A. I remember him going to Farmville, but I don't remember the date or anything about it. I remember he failed in business, I think, then, and went to Farmville.

Q. While in Richmond was his business a success? A. It seemed to me so, sir. He always told me he had plenty to do.

Q. You said that he failed in business. How long was this after they were married? A. That I could not tell you. It was not very long. I just kept on at my trade, working, you know, and I never

took any items of anybody's business but my own. I thought I had enough to do.

Q. Do you know why he failed in business? A. No, sir; I did not, unless it was bad management. I don't know. A good many of us fail in business.

Q. Was he on good terms with his patrons? A. Well, no, 138 sir. A great deal of fault was found with him. I never

knew it until after he failed in business that he had put up several of the watches in pawn. I heard all about Henry Bergheimer, and people came to me and I told them I had nothing to do with him after he left town. I begged Henry to go away from here. I was afraid he would get arrested, and they threatened him. They told me they would arrest him. I didn't want the disgrace on my children and myself.

Mr. FORREST: The answer of the witness is objected to as incompetent and hearsay testimony, and not being any fact or testimony based on the personal knowledge of the witness, and at or before the hearing counsel for the complainant will move to strike out the same for the reasons stated, and for the further reason that the testimony is immaterial and irrelevant to any issue in this case.

Q. You stated that they went to Farmville to live? A. Yes.

Q. Did they go together? A. No; I don't think they did. I know I had to pack up the material, the furniture, and I went down and saw it shipped myself; down to the depot.

Q. Who went first? A. I think Mr. Bergheimer went first.

Q. And then Mrs. Bergheimer? A. Yes.

Q. How long did they live in Farmville together? A. I 139 don't know really, but it was a very short time. It was not very long.

Q. Please state anything you may know as to the separation, if there was a separation, in Farmville, and what has been the attitude of the complainant towards the defendant since that time.

Mr. FORREST: Question is objected to, unless the answer sought to be obtained by it is based upon the personal knowledge of the witness or from facts secured by him in conversation or otherwise with the complainant.

Mr. ALLAN: The defendant states that he asks for the knowledge of the witness himself and is not intending to encumber the record with hearsay evidence.

A. All I know about it is he went away, and I paid very little attention—it is so long ago I paid very little attention to any letters or anything he might write, because sometimes they did not tell me, probably. I knew he was gone and did not give her any support, and all like that. I was doing a good business, and I was treating them like my own children, and I treat them like that today. I knew they were separated, but for what reason I didn't know more than that. I know it was always my wish that they would be always together. I never thought that it would ever come to anything like this thing here.

Q. Did your daughter come back to live with you? A. Yes, sir; she had no other place to go.

Q. Who has been supporting your daughter and her two 140 children since that time? A. I have, up till lately.

Q. Has Mrs. Bergheimer been helping in connection with this support? A. Yes; she has done all she could. She works very steadily all the time.

Q. Has her health been good? A. Well, no, sir; it ain't good, and it ain't good for some time. She is always complaining.

Q. Is her son Daniel employed at this time? A. Yes, sir.

Q. While living with you have you had an opportunity to know whether or not Mr. Bergheimer has contributed towards her support? A. I never knew he ever gave them a cent that ever I knew of excepting some little presents of a Christmas. It is so long ago, but I think I heard Danny say he gave her a present—Honey. I think it was a chain. Honey is the little girl's nickname. I call her Honey. I never called her by her right name ten times in my life.

Q. Was he present at the birth of his girl child? A. No, sir; not for about eighteen months afterwards.

Q. Did he come to see the children? A. He did. I remember one morning or day he came to see the children, and Louise was sick and did not come downstairs, and grandma took the two children downstairs with her, Danny and Honey, and I followed them downstairs and stood by them, and I begged Henry to leave town, that it was getting too hot for him and I was afraid every 141 minute that I would see him arrested. I had a father's affection for him and still have it.

Mr. FORREST: Answer is objected to, first, because it is not responsive to the question; second, because it contains the opinion of the witness in reference to certain matters which are not material or relevant to the questions at issue in this case, and, third, because the matter is immaterial and entirely irrelevant and incompetent.

Q. He came to see the children, however? A. Yes, sir.

Q. Did he ask to see his wife? A. I don't know, sir; I don't think he did.

Q. What was his wife's condition at this time when he called? A. Well, I think Louise was in bed. I don't know what her condition was then.

Q. Has his wife ever been to Washington to see him? A. Well, I don't know she ever went to Washington to see him expressly. She visits a lady there and stops there one or two days, maybe, or something like that.

Q. You used the word grandma above and the word Louise. Please state whom you mean by these two names. A. Grandma is my wife and Louise is my daughter (the mother of the defendant is meant by grandma and the defendant herself by Louise).

Q. Was Mr. Bergheimer while in Richmond addicted to bad habits? A. I never seen him intoxicated, but I heard he 142 gambled like thunder.

Mr. FORREST: The answer of the witness is objected, especially the last part, wherein the witness states what he had heard, as incompetent, being hearsay testimony, and the complainant, by his solicitor, will move to strike out or suppress the same at or before the hearing, and hereby gives notice of such intention.

Q. Did you ever hear Mr. Bergheimer say he had been gambling?

Mr. FORREST: Question objected to as leading and suggestive.

A. No, sir; I don't think I ever did. I actually did not want to hear it. That is about the size of it. I wanted to hide it, if it was so. I never wanted to pry into it because I was sorry to hear it. He was getting along so nice I was sorry he was doing anything of the kind. I was very sorry to hear it.

Mr. FORREST: The latter part of the answer is objected to as being entirely hearsay testimony, and being a voluntary statement on the part of the witness and not called for by the question, and also as including hearsay testimony.

Q. Has Mr. Bergheimer made any effort to get his wife to live with him that you know of in the last ten or fifteen years? A. No, sir; not as I know of.

Q. Has he been writing to her during the last ten or 143 fifteen years? A. Not as I know of. I have heard sometimes she got a letter from him, but it was so far gone and so far away I could not tell; it is so long.

Cross-examination.

By Mr. FORREST:

Q. Mr. O'Donnell, do you remember how long your daughter had known Mr. Bergheimer before she and he were married? A. No, sir; I do not. I could not tell you. They grew up together here, and he used to come to the house; I don't know how many years.

Q. Was it a matter of some years, do you recall? A. I think it was maybe a year or a year and a half or two years. I don't know. I don't know whether they went to school together or not. They have known each other since they were little boys and girls.

Q. And at the time they were married, the marriage ceremony, I believe, took place at your house? A. Yes, sir.

Q. And you were living at that time where? A. I was living on 818 East Broad street, right straight up here (indicating).

Q. Were you engaged in business at that time? A. I was. 144 Q. What was your business? A. Plumbing and gas and steam fitting.

Q. Have you been engaged in that business ever since? A. Yes, sir. I am not in business now. I am still working at my trade, though.

Q. Had you retired from business on your own account some years ago? A. I retired here in April. I sold out all I had and went to Newport News. Business was so bad for a few years I lost

everything I had and I went down there and did journeyman work. I left the Normal School of Hampton this day week. I had charge of the plumbing department. I could have stayed there as long as I lived, but the salary was not sufficient to support my family and pay my board. Uncle Sam wants me in the navy yard at Portsmouth. I don't know what I will do, whether to start in business or not.

Q. Is your daughter Louise engaged in any occupation now?
A. She is at Mr. Thalheimer's store.

Q. That is a dry-goods and notion store? A. A dry-goods store.

Q. Where is it located? A. It is on the corner of 5th and Broad.

Q. In this city? A. Yes, sir.

Q. How long has she been engaged there? A. I suppose, 145 maybe, ten or eleven years, something like that. I know she was up there, but I could not tell you how long.

Q. Before she was engaged there as a saleslady, had she any other occupation in town, or was she saleslady in any other store?

A. Well, she tried everything to make a living. She has been working since the separation.

Q. Has she been a clerk in different stores since? A. I think maybe she has.

Q. I merely want to get your best recollection. A. Maybe two or three stores; two or three places.

Q. How long after your daughter and Mr. Bergheimer were married did they live here in Richmond? Do you recall? A. I don't know. Let me see. Little Danny—maybe a year and a half or something like that.

Q. And while you were living here after their marriage, did they live any part of the time with you or did they go to housekeeping? A. They went to housekeeping with Henry's father and mother down on Main street.

Q. Was that immediately after marriage? A. I think it was; yes, sir.

Q. And at that time, as I understand, Mr. Bergheimer was engaged here in the jewelry business? A. Yes, sir; I think he was. That was his trade.

Q. Was he engaged in business on his own account? A. At that time?

146 Q. Yes. A. Well, no; I don't know. I could not tell you that. I don't know; it is so long. I could not tell you whether he was or not.

Q. How long was he in business, if you can recall, either on his own account or working for some one else, after the marriage and before you say he failed? A. I don't think he was in business much more than maybe ten or eleven months on his own account.

Q. Do you know of your own knowledge why it was he failed in business? A. No; I do not.

Q. And after he failed in business do you recall which one first went to Farmville—Mr. or Mrs. Bergheimer? A. I think it was Mr. Bergheimer.

Q. Were you present, before he went, at any conversation with his wife about her coming on there after he went? A. No, sir.

Q. You didn't hear any of that? A. No, sir.

Q. Do you remember how long after he went or said he was going to Farmville that his wife left Richmond and went there? A. No; I could not really tell you. I know he was working there, and I think he sent for her. I know I helped to pack the furniture and went down to the depot with it myself and paid the freight on it; but how long it was I don't know.

147 Q. Do you remember how long it was your daughter remained in Farmville before she returned? A. I don't think it was more than three or four months.

Q. And did you see Mr. Bergheimer about the time that your daughter returned from Farmville? A. No, sir; I did not see Mr. Bergheimer. I could not tell you when after he went away. Somebody told me he went to Washington.

Q. I am trying to get at your own personal knowledge of it. A. No; I did not see him.

Q. Did your daughter after her return show you any letters she received from Mr. Bergheimer? A. No, sir.

Q. Did she tell you where Mr. Bergheimer had gone? A. No more than I always understood he was in Washington.

Q. Do you remember whether Mrs. Bergheimer told you he had gone there? A. Not as I know of. Maybe I might have asked her about that.

Q. Do you remember whether after that time she ever told you he had gone to either Baltimore or Annapolis, Maryland? A. No, sir.

148 Q. Were you familiar with Mr. Bergheimer's handwriting at that time? A. No, sir.

Q. You were not familiar with it? A. No, sir.

Q. Do you remember whether within, say, two or three years after your daughter returned to you from Farmville she received any letters postmarked from Annapolis, Maryland, or from Baltimore? A. No, sir; I never saw one of her letters.

Q. While she was saleslady in this store you have referred to, of course, Mr. O'Donnell, you don't know whether she received any letters there or not? A. No, sir; I never pried into any of my children's business; never.

Q. And, as I understand it, she never showed you any letters? A. No, sir. I do think I heard her say sometimes, telling her mother, that she got a letter from Henry, but that was the end of it.

Q. But the contents you did not know? A. No more than the man in the moon I didn't know.

Q. Do you know the name of the lady that your daughter visited in Washington? A. Yes.

Q. What is her name? A. Mrs. McClelland.

Q. Let me ask you whether or not in the last seven or eight years she has been in the habit of visiting Mrs. McClelland 149 on an average of once a year. A. I suppose so.

Q. And while in Washington did she occasionally write

home? A. I think she would write a postal once in a while to her daughter.

Q. Did you ever see any of the correspondence? A. I would hear her say, "I heard from ma."

Q. What the postal card contained further than that you don't know? A. Just telling her she heard from ma and had a good time, just like a picnic, you know.

Q. How long has your grandson Daniel been at work? A. I guess Danny has been at work now—I don't know. Danny has been at work since he left school. He first went down to Ginter's.

Q. I want to get at the time. Has it been more than a year or several years? A. Yes, indeed; Danny has been at work four or five years.

Q. Now, you spoke of a visit Mr. Bergheimer made to your house. Do you remember when that was? I am referring now to a visit he made some time after your daughter had returned from Farmville. A. No, sir; I could not tell you the year nor the day, nor anything about it.

Q. Did you see him on that visit? A. I certainly did. I saw him that day when the children were shown him, and I 150 think I saw him after that on the street here, and I think I spoke to him, but it was some time after that, I know; maybe a year or so.

Q. Do you recollect that he visited your house, after your daughter returned from Farmville, on more than one occasion? A. No, sir; not that I know of, but once.

Q. And on this occasion to which you refer he saw the children? A. Yes.

Q. And your wife brought them downstairs? A. Yes, sir.

Q. Do you remember whether or not he asked for his wife at that time? A. I don't know whether he did or not. I don't think he did.

Q. But you are not positive? A. I don't think he mentioned her name at all.

Q. Did Mrs. O'Donnell have any conversation with him? A. No, sir; I don't suppose he stayed there three minutes.

Q. Who first saw Mr. Bergheimer; was it you? A. No; I don't know that. I could not tell you. It might have been. I don't know.

Q. Did you see him in the store or was he in the dwelling part of the house? A. No; it was in the passageway. I think it was down by the door.

151 Q. Did Mrs. O'Donnell see him? A. My wife?

Q. Yes. A. Yes.

Q. Did she have any conversation with him? A. No; only about the children. She said, "Here are the children;" that is all the conversation. I begged Henry then to leave town, because a day or two before that people stopped me on the street and were asking me where he was and all about him, and I said I didn't know, but they were red hot after him.

Mr. FORREST: The answer of the witness or so much thereof as is not responsive to the question is objected to as a voluntary statement and not called for by the question, and I give notice that I will move that the same be stricken out at or before the hearing.

Q. At the time you say you told Mr. Bergheimer what you have just stated was Mrs. O'Donnell present? A. No; I don't know that she was. I think I followed him up the street near the theatre and crossed over by Murphy's corner, and when we got to the theatre there we parted, and I said good-bye to him, "Good-bye, Henry," and I told him to get out of town as soon as he could.

Q. But you had no reason of your own knowledge why he should go. It was only what somebody else told you? A. No; I did not.

Q. And you think this part of the conversation took place after he left your house and while you were walking with him up 152 towards Main street? A. No; it was on Broad street.

Q. That is towards Murphy's hotel? A. Yes, towards Murphy's hotel; and I bid him good-bye at the theatre. I was going to work at somebody's house; I don't know whose house it was.

Q. And Mrs. O'Donnell said to him, "Here are the children"? A. Yes.

Q. Then what did she do? A. She took the children upstairs.

Q. Did she remain there while he spoke to them? A. Yes.

Q. What did Mr. Bergheimer say to the children? A. I don't know whether he kissed the little one or not, but it was not more than three minutes.

Q. Did you hear him say anything to the children? A. No, sir; not that I remember.

Q. Did you remain just where you were? A. Yes.

Q. Till he went out? A. Yes; and I followed out with him.

Q. Did Mrs. O'Donnell then take the children upstairs? A. Yes.

Q. Was anything said at that time about Mrs. Bergheimer's being sick? A. Well, I don't know whether her mother said she was sick or not, but I know she was sick. She was confined to her bed.

153 Q. What was the trouble with her then? A. Well, Louise was troubled a great deal with the disease I have got—a neuralgia.

Q. A sort of cold? A. A sort of cold. I know what constitutes a woman, and of course you know yourself.

Q. I merely wanted to know whether she had a cold. It was nothing serious? A. No; just feeling bad.

Q. Let me see if I can refresh your recollection as to this visit of Mr. Bergheimer's at the time he called. Was not Mrs. Bergheimer present in the parlor with some one? A. No, sir.

Q. You are certain of that? A. I am certain she was in bed; yes, sir.

Q. Do you remember what season of the year it was he called

there? A. No; I do not. I think maybe it was in the fall of the year. I don't know now.

Q. Do you remember his calling there the day before the 4th of July, 1879? A. No; I don't remember.

Q. Do you remember his calling there again on the 4th of July? A. No; I don't remember.

DANIEL O'DONNELL,
By JOHN A. SWEENEY,
Examiner in Chancery.

It is stipulated between counsel that the examiner or commissioner may sign the depositions for the witnesses.

154 At the same time and place also appeared DANIEL P. BERGHEIMER, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. ALLAN:

Q. Please state your name, age, residence, and occupation. A. Daniel P. Bergheimer; age, twenty-two, going on twenty-three. I am employed at the Chesapeake and Ohio Coal Agency Company, Richmond, Virginia, and residence, 14 North 7th street.

Q. What relation are you to the complainant and defendant in this suit? A. I am their son.

Q. Have you ever had any conversation with your father in relation to any difficulties that existed between himself and your mother? A. Yes, sir; every time I went to Washington I attempted to get an understanding or get out of him a reason. He told me at a certain age I was not old enough to understand, and I waited for a year or more possibly and I went to see him again. I went to see him a thousand or more times and approached the subject, and he always told me he was not in condition to give the matter an honorable consideration.

Q. Has your father been writing to your mother in the 155 last ten or fifteen years? A. I don't remember ever reading a letter from him.

Q. Did your mother write to him in the last ten or fifteen years? A. Yes, sir.

Q. Did you ever read her letters to him? A. Yes, sir; every one before they were mailed, for my consideration.

Q. Do you remember any particular letter that she wrote to him? A. Well, the last letter, I think, has been about a year ago; around about Christmas time she wrote him a letter, and that last letter was a letter I thought any man with a heart would yield to—speaking of the condition at our age, blooming up into children that he ought to be proud of, and things of that sort, you know; but he never answered that one.

Mr. FORREST: Answer is objected to as incompetent, as stating

the contents of a letter not produced, and notice to produce the same not having been given to the complainant or his counsel.

Mr. ALLAN: Counsel for defendant here calls for the production of this letter, referred to in the above answer, and gives notice that the evidence concerning this letter will be used only on condition that the letter referred to is not produced in evidence; in which event such evidence will be used as secondary evidence, and at the proper time and in the proper manner this letter will 156 be asked for and required.

Mr. FORREST: Solicitor for complainant, in reply to the so-called notice, states that the notice or claimed notice is not sufficient under the rules of practice of the supreme court of the District of Columbia, wherein this case is depending, to produce any such document; that the taking of testimony in this cause on behalf of the defendant was fixed for a day, and ample opportunity given to counsel in Richmond or counsel in Washington to give the proper notice to the complainant or his solicitor to produce any such letter, if any such letter ever existed; and solicitor for the complainant further says that he is not advised as to whether or not any such letter is in existence to which the witness' attention has been called; and, further, any such letter, if in existence, is immaterial and irrelevant to the issues now pending, because long after the desertion referred to in the bill of complaint, and when the remedy of the complaint had accrued, and he was entitled to the relief sought by his bill.

Q. You have stated that you read the letters which your mother wrote to your father. Please state the nature of said letters.

Mr. FORREST: The question is objected to because it calls for hearsay testimony, sufficient foundation not having been laid for the offering of any such evidence, and for the further reason that if any such evidence exists or the contents of any such letters are in existence, the evidence sought to be adduced by them is immaterial and irrelevant to the issue now pending, and because 157 for the reason last stated in the prior objection of the solicitor for the complainant.

A. Just as I said above, they explained the condition of affairs, and at our time in life. They referred to our age and the pleasure it would necessarily give to a father, and also made a proposition, as well as I can remember, about a future entirely different from the past, begging him in the name of God that the past be forgotten and that a new future should begin.

Mr. FORREST: The answer is objected to for the reasons last given.

Q. Do you remember ever having had a talk with your father in the presence of your sister and mother? If so, please state what was said by your mother and father at that time in the presence of each other.

Mr. FORREST: That is objected to because time and place is not stated.

Q. In the Smithsonian grounds in 1891, do you remember any such conversation? A. Yes, sir; I was quite young at the time, I will admit, but I remember perfectly well making an engagement, and he came to meet my mother. I was accompanied with my mother as well as a cousin of mine. They talked on the bench, but she never could get him to talk on any subject. They were on the bench twenty minutes. There was not time enough to approach any subject of that kind.

158 Q. Did she at that time make any proposition to him?

Mr. FORREST: Objected to as leading and suggestive.

Q. Did she or not make any proposition to him? A. That was the object of the visit or engagement.

Q. What did she say to him?

Mr. FORREST: That is objected to as leading and suggestive, the witness already having testified that she did not say anything at all on the subject.

A. I did not make the statement she did not say anything at all on the subject. I said he would not allow her time to approach the subject. That was her idea. She went there for the sole purpose of making the arrangement. I made the engagement in the morning to meet her there and he came. He was not there twenty minutes the whole time sitting on the bench there. I was there for a few minutes, but I went out and played. I was about eleven years old, I suppose, or twelve; but I remember perfectly well now that that was my mother's object, and she told me she approached him and he would not listen to anything she had to say.

Mr. FORREST: The latter part of the answer is objected to as hearsay, and therefore incompetent, and the whole of this testimony is objected to as incompetent because having transpired long after the right of the complainant, if at all, accrued, entitling him to the relief prayed for in the bill of complaint.

159 Q. Do you know of your own knowledge whether or not a continuous or any sort of an effort has been made on the part of your mother to bring about the reuniting of herself and husband? If so, please state all you know on that subject. A. Well, I know it has been done, and I know I have done so. I have been to Washington in the last five years no less than one hundred times. I have been employed in the railroad business, and have gone to Washington and principally to see him, and ever- time I went to see him it was on a matter of importance, and ever- time I opened the subject he would shut me off by saying he was unable to give the matter consideration. The last time I went to see him he positively declined to say anything at all on the subject. That was after his illness—the first time I saw him after his illness. I don't think I remember being there since.

Q. Has your father contributed to the support of yourself, your sister, and your mother? A. No, sir.

Q. Has he sent checks to your mother, that you know of? A. Never in his life, that I know of.

Q. Then, as I understand you, you have this personal pride to have your father and mother reunited, and when you saw your father in regard to this matter he would tell you he was not in a position to give this matter an honorable consideration. Is this what you say?

Mr. FORREST: That is objected to as not a proper method of examining counsel's own witness. The record discloses exactly 160 what the witness has testified to, and that alone is the source from which the court's attention will be directed as to what he has testified to, and the question will be moved to be stricken out or suppressed for the reasons stated, and for the further reason that the witness has not so testified, as the record will disclose.

Q. Has your father ever been to Richmond to see you and your sister and your mother to your knowledge? A. These three persons? If he made a visit to me—

Q. You can answer as to each person. A. Not to my mother. So far as I know, he has never visited her at her house or at her place of business. He visited me once when I was going to school, and I just remember the fact he visited me, and he gave me about a quarter, I believe, to get a lunch, and that that was the first piece of money I ever received from him up to that time.

Cross-examination.

By Mr. FORREST:

Q. Prior to your going on the stand, Mr. Bergheimer, you and your sister, your mother, and grandfather were in Mr. Allan's office and talking about your testimony, were you not? A. Prior to coming on the stand?

Q. Yes. A. They were here before I was. I was here a 161 few minutes.

Q. When you came they were all here together—your grandfather and mother and sister? A. Yes, sir.

Q. How did you say you are employed now? A. I am employed as clerk with the Chesapeake and Ohio Coal Agency Company.

Q. How long have you been employed in that way? A. Well, I have been employed by the Chesapeake and Ohio Coal Agency Company since the 1st of January.

Q. What year? A. 1899.

Q. And before that you were employed here? A. Yes; I was employed with the Chesapeake and Ohio Railway Company, doing the same business I am doing now.

Q. How long have you been with the railroad company? A. About seven years, I believe.

Q. So that you went with the railroad company some time in

1892, was it? A. I went with the railway company, I think, in September, 1893.

Q. Was that your first place of employment? A. No; I was in the employment for about three months of Allen & Ginter, in their factory. I went to work when I was very young. I left school very early.

Q. And you say you were not employed in any way before you went with the railway company? A. I was employed about 162 three months at Allen & Ginter's factory.

Q. Cigar factory? A. Cigarette factory.

Q. You say that when you went to Washington and you and your mother met Mr. Bergheimer, your father, in the Smithsonian grounds, it was in what year? A. In the year 1891.

Q. Do you remember what time of the year it was? A. No; I do not.

Q. Was it in the summer time or in the fall or winter? A. I don't remember anything about it except it was in the year 1891. I remember distinctly making the engagement, however.

Q. Were you stopping in Washington at that time with your mother? A. Yes, sir.

Q. Whereabouts? A. 1324 10th street N. W.

Q. Mrs. McClelland's? A. Yes.

Q. How long were you in Washington on that visit? A. I think that was the second day we had been in the city. We got there the afternoon prior to that, about 3 o'clock.

Q. Did your sister go along with you? A. Yes, sir.

Q. What is the difference in age between your sister and 163 yourself? A. About eighteen months, I think.

Q. She is eighteen months younger? A. Yes, sir.

Q. How did you arrange about this meeting; did you leave a note for Mr. Bergheimer or did you call? A. I called personally.

Q. Where? A. At his place of business, 1101 Pennsylvania avenue.

Q. Galt's jewelry store? A. Yes, sir.

Q. Was anybody present with you at the conversation you had with him? A. My sister.

Q. No one else? A. No, sir.

Q. What did you say to Mr. Bergheimer? A. I told him my mother was in the city with us, and she was over in the Smithsonian grounds and would be glad to see him. I told him she wanted to see him about bringing us together again.

Q. At that time how old were you? A. I was about twelve.

Q. Where was your mother at the time you had this conversation with your father? A. She was waiting for us at the corner.

Q. Did she tell you why she did not go in to see her husband herself? A. She did not tell me; no.

164 Q. Where did she have this conversation with you about what you should say to Mr. Bergheimer? A. On our way to the store.

Q. Your sister heard the conversation on the way down? A. Yes.

Q. And she did not say to you why she would not see Mr. Bergheimer herself? A. I knew.

Q. You knew why she would not go to the store and see him? A. Yes.

Q. What was the reason? A. It was simply this: that she endeavored to get him to come to her, and he refused, and she sent me there, thinking he would come and make an engagement. It was a very embarrassing position for her, and I suppose that is the only reason she did not want to go there, and they knowing at the store of the circumstances.

Q. Who knew at the store the circumstances? A. I think everybody in the store knew it.

Q. Do you know anybody in the store who knew it? A. Not at that time.

Q. How do you know they knew the circumstances? A. I didn't say I knew. I supposed so.

Q. Why do you suppose so? A. I dwelt on that supposition because almost everybody that knew him knew it.

165 Q. How do you know that? A. I knew it from the fact that everybody on our side knew it, and I judged everybody on his side knew it, too.

Q. You are not giving your testimony on supposition, are you? A. I am not giving my testimony on supposition, not excepting the store.

Q. Then, nobody who was in the store told you they knew all about it? A. No, sir.

Q. And you have no reason for stating that everybody in the store knew it? A. None except as I said before, my supposition.

Q. Was it not your mother who told her own folks about the matter? A. I don't know whether it was or not. I grew up with them.

Q. Did Mr. Bergheimer correspond with any of your folks? A. None at all.

Q. How do you know they got it from him? A. Got what from him?

Q. All these circumstances you supposed must have come from him, as his family knew it. A. Living at home, I think it was perfectly natural I should know it. I did not know it until I was a good age, and I was under the impression until—

Q. What impression? A. That he was an honest man.

166 Q. Who gave you a contrary impression? A. No one except myself; his actions.

Q. What actions? A. In disregarding me.

Q. Disregarding you? A. Yes.

Q. How? A. And my mother and sister.

Q. I want to know in what way he disregarded you. A. I think he had more regard for me than anybody else, because I was with him more.

Q. I want you to say what he did that makes you say he disregarded you. A. He neglected me until I was up to the age when I could talk to him.

Q. How? A. In support. He hasn't given me the first pair of shoes.

Q. He never gave you anything? A. No, sir.

Q. He gave you money? A. Yes; he gave me checks, to the amount of \$250 or perhaps \$300.

Q. You don't know how much? A. No, sir.

Q. Did he ever give you money except by check? A. Yes, sir.

167 Q. How frequently? A. Whenever I went to Washington to see him he would give me a dollar, or five dollars for that matter, for spending money, and he gave it to me with those words, that it was spending money. I asked him one time up there when I went up on my usual pass and I didn't have money to come back in the Pullman, and I asked him for the Pullman money and he gave me that. That was a dollar.

Q. That is what you mean by disregarding you? A. Yes.

Q. And what did you mean by saying he was not honest? A. I mean by that that I consider a man honest that cares for his family and helps support them and contributes everything to their support and lets them hear from him and answers their letters.

Q. That is what you mean by that? A. Yes.

Q. You don't know anything about the circumstances, of course, except as they were told you by your mother, as to why they did not live together shortly after they were married? A. As a matter of fact, my mother never told me a word in my life. I simply drew it myself.

Q. How? A. In this way: As I grew up I began to understand it. They never told me my father left me or left my mother, and I came to the impression I got myself.

168 Q. It was not based on any fact you knew? A. It was a fact I knew that he did not give it to me, and I based it on that fact.

Q. Didn't give you what? A. Did not contribute to my support.

Q. But you know nothing of your own knowledge as to why or how they separated? A. Not until after years.

Q. And then you knew that from somebody else? A. Yes, sir.

Q. Now, at this conversation in the Smithsonian grounds, as I understand it, nothing was said by him during that conversation, either voluntarily or in answer to your mother, about his coming to live with her again? A. No, sir.

Q. Now, you say you have been working since 1891? A. Not 1891. I said September, 1893, I think it was.

Q. It has not been quite seven years since you commenced working? A. Yes; it was seven years in September, was it not?

Q. You will have to testify of your own knowledge and according to your best recollection. A. It was since September, 1893.

Q. And from that time down you have worked steadily? A. Yes, sir.

Q. How much did you receive in 1893? A. I received four dollars a month when I started to work.

169 Q. When was that increased? A. That was increased when I went with the railroad company.

Q. Four dollars a month or four dollars a week? A. Four dollars a month.

Q. When did you go in the railroad business? A. I went there right after I went with Allen & Ginter.

Q. You were there only a few months? A. Only a few months.

Q. How much did you get from the railroad company? A. I worked there two years at \$10 a month.

Q. At the expiration of two years what did you receive? A. Fifteen dollars, and it was increased on until I was twenty-one.

Q. When you were twenty how much were you getting? A. The same as I was when I was twenty-one, \$25 a month.

Q. And you were living at that time with your mother and grandparents? —. —.

Q. When was it, if you recollect, that your mother first showed you any letters written to your father, which you claim to have seen? A. That I can first recollect?

Q. Yes; when was it you first saw them? A. Well, I cannot say about how many years; some years ago, though.

Q. Well, was it subsequent to your visit to Washington in 170 1891? A. I don't recollect seeing any subsequent to that.

Q. You don't recollect seeing any after 1891? A. No; I didn't say that; prior to that.

Q. How soon subsequent to 1891 did you first see any letters written by your mother to your father? A. I think it was possibly a year; about a year.

Q. That would make it about 1892, would it? A. Yes.

Q. And at that time you were sixteen years of age? A. Yes, sir.

Q. Had your attention been called to the contents of any such letters since that time? A. Yes, sir.

Q. By whom? A. By my mother.

Q. How did she call your attention to it? A. She always wrote them and let us read them before she sent them.

Q. I want to know whether since she showed them to you your attention has been called to them. In other words, has your attention been called to them, say the first one, from 1892 down to this time? A. Yes.

Q. By whom? A. By my mother.

Q. When was that? A. Right straight along. The dates would fill a page. Every day she referred to them.

171 Q. What would she say? A. She said she did not understand; that she waited a while and kept putting it off, and she wrote again, "I have not heard," and "I don't know what is the matter," and things of that sort.

Q. My question was, When was your attention called to what was in the letter, say, in 1892, after that time? That is, did she ever speak to you from 1892 down to this time as to what she had written in 1892? A. I don't think she referred to any particular letter; she took them as a whole.

Q. Did she speak to you about what she had written in each of these letters since 1892? A. Yes; I always saw them.

Q. I say from the time you claim to have seen them down to this time has she ever talked about these letters? A. Yes.

Q. What did she say about them? A. As I said before, she did not understand why she had not got an answer.

Q. That is not saying what the contents of the letter was. A. The contents of the letters, as a whole, were as the first one.

Q. Did she say anything about the contents of any letters? A. She said she had written previous letters.

Q. You claim to have seen a second letter in the year 172 1892? A. I don't claim to have seen a certain letter. I am talking of the letters as a whole.

Q. There must be some particular letter? A. I don't refer to any particular letter.

Q. Were all the letters in the same way? A. All the same way; the same subject.

Q. And all in the same language? A. Practically.

Q. What did she say in the first letter you saw? A. She said in the first letter I saw, as I have stated before, that we had reached that age that she thought we would be an honor to our father and mother, and she thought it was time he should come back, and that he was in position to do it and believed he was in position to do it. She said from what he knew of her that she loved him and things of that sort.

Q. You testified on your direct examination that that was the contents of a letter that was written about a year ago last Christmas? A. Yes, sir; practically the same thing.

Q. That you say was in the letter she wrote to him in 1892? A. Yes; adding that she was willing—

Q. Willing to do what? A. Willing to be reunited.

Q. Did she tell you why it was they had never reunited 173 from 1876 down? A. I don't recall her ever telling me.

Q. Did she tell you she had written a letter to him at Annapolis, Maryland, saying she would never leave Richmond to come to him? A. No, sir.

Q. She never told you that? A. No, sir.

Q. As I understand, the only time you can recall that your father called upon you in Richmond was when you were attending school? A. Yes, sir.

Q. Do you know of your own knowledge how often your father has been to Richmond since 1876 or 1877? A. No, sir.

Q. Do you remember the occasion of your father's illness in Washington? A. Yes, sir.

Q. At the time he was sick, do you remember where he lived? A. Yes, sir.

Q. Did you call there? A. Yes, sir.

Q. Whom did you meet there? A. I was met at the door by a lady who said she was a nurse.

Q. What did she tell you? A. I asked if Mr. Bergheimer was

174 in and she told me, yes, sir, that he was ill ; and I asked if it was possible for me to see him, and she said no. But she said, " If you will give me your card I will take it up." And I told her I was his son and I felt it was my duty to see him. And she said, " If that is the case I will carry your card up." And she carried the card up, and came back and said it was impossible for me to see him.

Q. Was that all the conversation that took place ? A. Except I asked who was the physician, and I learned that and went to see the physician.

Q. Who was the physician ? A. I don't remember his name.

Q. Do you remember where his office was ? A. No, sir. It was away on the outskirts of Washington, away down about the Capitol lot somewhere.

Q. Where was Mr. Bergheimer living at the time you called ? A. He was living on F street somewhere ; I think it was between 1st and 2nd. I don't know much about Washington.

Q. That was only about eight or ten squares from the Capitol ? A. I don't know anything about Washington at all. It was somewhere in that direction.

Q. You have been to Washington frequently ? A. Yes ; I went there on business, but never went around much at all.

Q. Did you see anybody else at Mr. Bergheimer's house except this person whom you were told or that said she was a nurse ? A. Yes ; I saw another lady there.

Q. Did you have any conversation with her ? A. I went again the next morning and inquired how he was. That is all. I don't know that I had any conversation with her.

Q. Did you say to any one of these persons that you wanted to see him on business ? A. Yes ; I insisted upon it. I felt it was my duty. At the same time I had business with him.

Q. What business ? A. The business was to raise money.

Q. You were in the employ of the railroad company at that time ? A. Yes, sir.

Q. What did you want to raise money for ? A. It was a personal matter. I had to raise it ; to raise it personally.

Q. And you insisted upon seeing your father, who was quite sick, in order to trouble him about that business ? A. Of course, after I learned he was ill I did not insist. I did not realize until after that his condition. I saw the doctor and he told me he was quite ill.

Q. Did you go to Galt's store ? A. Yes.

Q. Did you see there one of the firm ? A. Yes.

176 Q. Which one ? A. Norman Galt.

Q. Did you have a conversation with him ? A. Yes ; I told him about my object in seeing him.

Q. What did Mr. Norman Galt say ? A. I told him what my object was and said it was a matter of money, and I made a proposition, and he said he would do what he could.

Q. Did you tell him the amount of money you wanted ? A. I don't know whether I did or not.

Q. Did you tell him you wanted \$250? A. I don't remember.

Q. How much did you tell him you wanted? A. I don't know. I know it was a matter of money.

Q. Did you urge upon him that it was important you should have it? A. I told him it was important for me to see my father about the matter. I did not want Mr. Galt, or Mr. Bergheimer, for that matter, to give me any money. I went there as a matter of business and offered to make a loan from those people and give back so much from my earnings.

Q. How much security did you give Mr. Galt? A. I don't remember.

Q. Did you say you wanted to borrow \$250 from him in cash? A. I don't remember the amount.

Q. And you knew at that time your father was sick? A. I didn't know he was sick.

177 Q. Who told you he was sick? A. He was a rather stout man.

Q. Mr. Charlie Berry? A. I would not say it was him. I know him when I see him. He has a smooth face.

Q. He was rather stout? A. Yes.

Q. Did he tell you Mr. Bergheimer was ill? A. Yes; that he had been ill, and had been ill for some time, and he told me what the number was, and I went right away to see him.

Q. And though you were told that, you insisted upon seeing your father? A. Yes; not realizing his condition.

Q. But you were told he was ill? A. He was ill; but that does not necessitate a dangerous condition.

Q. Did he not tell you he had typhoid fever? A. I don't remember.

Q. Is that the only occasion you had a conversation with Mr. Norman Galt? A. No, sir; if I remember correctly, I wrote him a letter to that effect.

Q. When was that? A. Shortly after I got back.

Q. After you wrote the letter did you see Mr. Norman Galt again? A. I don't think I did.

178 Q. Then your recollection is you only saw him on one occasion and had a talk with him? A. About that business matter.

Q. What other conversation did you ever have with Mr. Norman Galt? A. Nothing except shaking hands with him and asking him how he was or he asking me how I was.

Q. Did you ever have any conversation with Mr. Walter Galt? A. Yes.

Q. Was that about the same time you had the conversation with Mr. Norman Galt? A. I think Mr. Norman Galt was sick at that time.

Q. When did you see Mr. Walter Galt? A. The next time I was in Washington, about a month after that.

Q. What did you say to him about Mr. Bergheimer, if anything? A. Nothing.

Q. Did you ask him for a loan? A. I don't remember asking him about that matter. That was with Mr. Norman Galt.

Q. What conversation did you have with Mr. Walter Galt? A. My conversation was just that I went in and shook hands and spoke to him personally a few minutes and asked him how things were going on and left him.

Q. Did you have any conversation about money matters? A. I don't recollect having any with Mr. Walter Galt. I wrote a letter to one of them, but I don't remember whether it was to 179 Walter or Norman.

Q. When did you first commence your visits to Washington to see your father? A. About six or seven years ago.

Q. And you went there every month? A. At one time, a couple of years, I think I went there more than once a month.

Q. How frequently did you go there? A. I went there, I suppose, once every other week.

Q. When you came to Washington, did you always go to Galt's store? A. Yes.

Q. Always? A. Always, except the last year or two.

Q. Upon any of these occasions when you went there to see your father, you always went to see him at Galt's? A. I don't remember seeing him anywhere else.

Q. And did you ever have a conversation with him at Galt's in the presence of anybody else? A. No, sir.

Q. How many times did you see him in Galt's in this year? A. Once.

Q. When was that? A. That was during the Dewey celebration. I saw him standing at the door.

Q. Did you have a talk with him? A. No, sir.

180 Q. Did you speak to him? A. Yes, sir.

Q. That was the only time this year? A. That was the only time this year.

Q. When in 1898 did you go to see him? A. I went to see him in '98. I think that was the year he was ill.

Q. I am trying to get at your recollection. A. I don't keep a record of every time I go to Washington, because I go there so often.

Q. But I want to get at, if I can, how many times you saw him in 1898. A. I could not say.

Q. Did you see him more than twice? A. I think I did. 1898?

Q. 1898. A. I didn't see him in 1898. I don't think I saw him in 1898 at all to talk to.

Q. How about 1897? A. I think I saw him several times in that year to talk to.

Q. When you say you saw him several times, how many times do you mean? A. Three or four.

Q. How many times in 1896? A. I saw him more in 1896, and more as the years go down.

181 Q. How frequently? A. I suppose I saw him a dozen times.

Q. Did you see him as many as fifteen times in 1896? A. About a dozen times.

Q. How about 1895? A. I saw him about the same number of times.

Q. That makes altogether about thirty times. How do you make it one hundred times that you saw him in the last five years? A. Well, you left out some years since 1895.

Q. I called your attention to 1895, '96, '97, '98, and '99; that is the last five years. Now, you said you saw him in the last five years at least one hundred times. I called your attention to each specific year and I ask you how you make it you saw him one hundred times in the last five years. A. I made him more than one visit the same time or trip I made.

Q. You went to see him one day and came back on the same day or the next day? A. Frequently I went on the morning train and came back on the night train and went there the next morning, and sometimes stayed two or three days.

Q. Where did you stop in Washington? A. Always at 1324 10th street N. W.

Q. At Mrs. McClelland's? A. Yes, sir.

Q. Did your mother go with you on any of those occasions 182 in '95, '96, '97, and '98, and '99? A. Well, my mother went up with me—not with me, because I went a different route. I had a pass on a different route. I went on the C. & O., but she went on the same days, if I remember correctly.

Q. Please look at these letters I now show you, three in number, and tell me whether or not they are in your handwriting (handing witness three paper-writings). A. Yes, sir.

Q. Mr. Bergheimer, whether or not your mother received any letters from your father at her place of business, of course you don't know. A. Yes; I know it, because if she had received them I would have seen them.

Q. You only presume she did not receive them from the fact she had shown you letters? A. I don't remember her ever receiving a letter from him. I say this: If she ever received one from him I would have seen it.

Q. Why? A. Because I am her son, and I always see those things.

Q. My question is, If she had received a letter at her place of employment you would not necessarily have known it? A. I would.

Q. Were you there? A. No, sir.

Q. How is the mail delivered, at the post-office or by car- 183 rier? A. By carrier.

Q. If a letter was delivered by carrier to her place of business you would have known it? A. Yes.

Q. How far is your place of business from where your mother is employed? A. Six squares.

Q. And at what time in the morning do you go to work? A. Nine o'clock.

Q. And if the letter was sent to her residence or place of business from your father or anybody you would have known it? A. Yes, sir.

Q. And you are just as positive of that as anything else you testified to? A. Yes, sir.

Q. Mr. Bergheimer, did you ever know, either from your mother or either one of your aunts, that your father proposed to send you to Georgetown college to school? Did they ever tell you anything about that?

Mr. ALLAN: I object to that question on the ground that it calls for hearsay evidence, and at the proper time and before the proper tribunal a motion will be made to strike the question from the record for the reason given, and for the further reason that it does not tend to prove or disprove any fact in issue in this case.

A. Yes, sir.

Q. Did you learn it from your mother, Mr. Bergheimer? 184 A. No, sir; I think I learned it from him himself.

Q. Do you remember how old you were at that time? A. No, sir.

Q. Was it before you left school in Richmond? A. I think it was at the time I was going to school—in the latter part of it.

Q. Did you communicate that fact to your mother? A. I don't recollect.

Q. As a rule, whenever you had conversations with Mr. Bergheimer about such matters as that, didn't you talk to your mother about them afterwards? A. Yes, sir.

Q. Do you recollect whether you told her that or not? A. No, sir.

Q. What is there as to the probability of your telling her? Is it likely you did or did not? A. It is likely I did.

Q. Did you ever have a conversation with your mother about your father having spoken to you about that at that time? A. Yes.

Redirect examination.

By Mr. ALLAN:

Q. A great deal has been asked you in regard to your wanting money. Will you please state for what purpose you wanted 185 this money? A. Well, at the time I made that proposition my grandfather failed in business. We then had to struggle along to pay expenses, and I had gotten behind in my accounts and gone into debt for personal furnishings, and that debt with my others made that amount.

Mr. FORREST: Solicitor for the complainant here states that he expressly and purposely did not ask of the witness any reason why he wanted the money or for what purpose he intended to apply it in the event of a loan.

Mr. ALLAN: Counsel for the defendant expressly asked the question, because in evidence here adduced and in the evidence of this

witness it occurred to him as being probably material to show that this money was necessary at this time for the maintenance of his family.

Q. Upon this request was any money gotten? A. No, sir.

Q. Will you please state whether or not you got replies to any of the letters you were questioned about by counsel for complainant? A. No, sir.

Q. You have stated that you were positive that if your mother had received a letter from your father that you would have known of it? A. Yes, sir.

Q. You have also stated evidence concerning facts and happenings as to visits in Washington and conversations with your father.

Please state whether or not these are facts of your own
186 knowledge which you remember, and at the happening of which you were present.

Mr. FORREST: That question is objected to because the record of the testimony already in indicates exactly upon what knowledge the testimony of the witness is based, and this is not either a proper way of re-examining the witness nor is it rebuttal testimony of what he has been asked on cross-examination.

A. Yes, sir.

Q. And you have stated that your reason for saying that your mother did not receive a letter from your father during certain periods was because had she done so you would have known it, and giving your reasons why you would have known it. That is your answer, as a conclusion from precedent circumstances?

Mr. FORREST: That question is objected to because the conclusions of the witness are not competent testimony, the facts on which the witness may draw his conclusions being the only proper sources of testimony; and the question is further objected to because it is in a way putting in the mouth of the witness, in the language of the questioner, facts which it is supposed the witness has heretofore testified to, which is not a proper method of examining the witness; and, further, because the record shows what the witness has testified to on the points named in the answer.

A. Yes, sir.

187 Recross-examination.

By Mr. FORREST:

Q. The reasons given by you for desiring to incur that debt and borrow that money are the reasons stated in the answer to Mr. Allan's questions, and those are the sole reasons, are they? A. Yes, sir.

Q. So that, as I understand you, it was not for the purpose of maintaining your mother and yourself, but was because of obligations you had incurred you wanted to wipe out? A. You will observe I said my other reasons at home—my obligations at home.

Q. But you did not state your obligations at home, as I understand you, in your answer to Mr. Allan's question? A. I said it was for my personal expenses and by reason of failure and circumstances at home that I did so. It was compulsion.

Q. And that, you say, was the only reason for desiring to obtain the \$250? A. I don't remember that amount.

Q. Well, the amount you desired to secure from your father or Mr. Galt? A. Yes, sir.

Q. Did you obtain this \$250? A. No, sir; or any other amount.

Q. So, the amount, whatever it was, you desired at that 188 time, as a matter of fact, you did not procure; is that right?

A. Yes, sir.

Q. And how as to these debts and obligations; have they been subsequently wiped out or liquidated? A. Some of them have.

Q. And some still remain due? A. Yes, sir.

Q. Now, you say you never received any answer from these letters you wrote to your father? A. Well, from the majority of them I did not.

Q. Did you ever receive any answers from any of them? A. Yes, sir.

Q. Have you any of those answers with you? A. No, sir.

Q. Do you know whether the letters are now in your possession, or whether you could procure them? A. They are not in existence.

Q. They have been destroyed, have they? A. Yes, sir.

Q. Now, in reply to some of those letters, didn't your father send you a check? A. That is all he did. Whenever he wrote in reply he sent a check.

Q. Were not the letters you sent mostly for money for the purpose of aiding you to get along? A. At times it was, yes.

Q. Was not that the principal subject you wrote to him 189 about? A. Well, I never said that. I don't remember whether it was or not.

Q. I don't mean you said when you wrote to him that that was the principal subject you were writing to him to about; but as a rule, was it not in reference to money matters principally you wrote to him about? A. Not always.

Q. Was it not principally? A. Well, I could not say principally, because he made a suggestion of his own to educate me and I wanted to get the money from him for that reason.

Q. Do you know why he did not send you to Georgetown college as he had proposed? A. No, sir.

Q. You said, as I understand you, that you spoke to your mother about it. What did she say? A. I was going to a private school then at my grandfather's expense, and we were in that condition that I was compelled to go to work. I could not leave her and I had to go to work to support her. That is the reason; I could not afford to go to college.

Q. And when you were going to work for some time you received four dollars a month? A. Yes; for about three months.

Q. And from that time what? A. It increased all the way up.
Q. Just as you have heretofore testified? A. Yes, sir.

DANIEL P. BERGHEIMER,
By JOHN A. SWEENEY, *Examiner.*

190 Whereupon a recess was taken until 2 o'clock on the same day.

Met at 2 o'clock p. m. on the same day after recess.

Present: Same counsel and parties.

Whereupon ADELAIDE LOUISE BERGHEIMER, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. ALLAN:

Q. What relation are you to the complainant and defendant in this suit? A. Daughter.

Q. Do you know of any effort being made on the part of your mother to cause your father to come back and live with her? A. Yes, sir; she has again and again tried to get him back, and every time we talked on the subject or tried to talk he would put it off and would not talk on the subject.

Q. Have you ever made any effort yourself to talk with him about it? A. Yes, sir.

Q. Please state what efforts you made. A. I have been down to the store time and time again and asked him down there about it, and every time I started to talk about it he would make out he had some business to attend to and would go to the other side of 191 the counter and come back again, and he would state he would not have time to talk about it and would put it off, and I asked him if he would come up to the house, and he would never talk about it in any way.

Q. Was your mother at the house? A. Yes, sir.

Q. Did you ever call on him at his place of residence? A. Only once when he was sick.

Q. Please state what occurred. A. Well, I heard he was sick and I went up. I went up to Washington for the purpose of seeing him and I went up to the house and asked to see him, and a lady came and refused to let me see him, and I insisted upon seeing him, and he was my father and I thought it was my duty to see him. She said he did not care to see me or any of the family, and that if they came he would not see them. I insisted upon seeing him and stood at the door and called him and he refused to come, and I told her if she would not let me see him I would go up in his room. If he would not come down I would go up to his room and she refused. Then I called again and he heard me and came down to the door, and I went up to him and put my arms around his neck and he pushed me right away and said, "I don't care to have anything to do with you or any of the family, and you can tell your mother and all the rest of them to go to hell, that I

don't give a damn for them." He told the woman to shut the door, and with that he took me by the arm and demanded of her to shut the door in my face.

192 Q. Did he use any force to put you out? A. He only took me by the arm. She came up and put her arm on him and said, "You are took weak to stand this," and led him back to the room, and I cried there and pleaded with him to only talk with me, and he refused.

Q. Have you ever been to Washington at any time when your mother has made any other efforts to see him? A. Yes, sir; I always went with my mother to Washington, and every time I went there I have again and again gone down to him, and went with her to Woodward and Lothrop's and told him that mamma is at Woodward & Lothrop's and to "Let me bring you over to see her," and he said, "No, sir; I will not see her," and he would not see her or come where he would ever see her, and time and time again he made an arrangement to meet her at church, that I might get them to come together, and every time he broke the engagement.

Q. What was your intention in doing this? A. To bring my mother and father together, and that they might live together, and I told him time and time again, "Papa, you have two good children; why don't you come and make some arrangement to live together? I will do all I can," and he refused everything.

Q. Did he refuse you in person to come back? A. Yes, sir.

Q. Has he ever contributed anything to your support? A. He has never given anything to my support especially; sometimes he would give me \$5 or \$10; once when I came down to the store to come home.

Q. Who has supported you? A. My mother.

Q. Do you know of your mother's writing and mailing any letters to him? A. Yes, sir. I know time and time again she has written, and the times we have written, and she sat down and wrote at the bottom a postscript—at the bottom of ours—and he would not acknowledge them or acknowledge any of her letters.

Q. Did he acknowledge your mother's letters? A. No, sir; even when his father died, and he came down to the funeral, I went to the funeral with him and I asked him, "You are here now, and on this sad occasion come home now and make mamma happy." He came to the carriage door, and when we came down to the door of the carriage—and his cousin, Philberg Bergheimer, was in the carriage, and when I insisted on him coming down to the house he refused me, and when I insisted on his coming out he said that he would not; that he wanted to catch a train, but would come down later on, which he did not, and he would never have anything to say to her. Philberg Bergheimer winked his eye at me in the carriage, as much as to say he would not come; but he never came.

Q. Has your father ever visited your mother since he has been living in Washington? A. No, sir.

194 Q. Do you remember of his ever writing to her? A. Yes, sir; he wrote to her—he wrote to mamma? No; he never wrote to her.

Cross-examination.

By Mr. FORREST:

Q. Do you remember when it was that your father came to Richmond upon the death of one of his parents? A. Yes, sir.

Q. When was that? A. It was when his father died. I don't remember exactly the date, but I think it has been three years ago.

Q. About three years ago? A. Yes, sir.

Q. And it was at the death of his father when you say you had this conversation with him? A. Yes, sir.

Q. Did you go to the burial ground in the same hack with your father? A. Yes.

Q. Who else? A. His cousin, Philberg Bergheimer, and I think there was another lady. I don't know who the lady was, but she was in black, but I sat on his lap.

Q. Do you remember who the lady was? A. I don't remember who the lady was, but I think it was a close relation, and I think it was a lady he was boarding with.

195 Q. But, as a matter of fact, you don't know who she was?

A. No, sir; I don't remember. She was dressed in black, with a long black veil.

Q. And you four were together, as you recollect? A. Yes, sir.

Q. And when you say he had this conversation with you, had the hack stopped to let you out? A. It stopped at my door, 17 East Lee street.

Q. When you had the conversation was the door open, so that anybody in the hack could hear it? A. Anybody who was sitting in the hack. Then I left, and turned around and walked in.

Q. Who was sitting next to you, in the next seat? A. I think it was Philberg Bergheimer.

Q. He was close enough to you to hear what you were talking about? A. Yes, sir.

Q. And where was the other lady, on the same side or on the other side? A. She was on the other side.

Q. Directly opposite? A. Yes. I am not sure that the lady came back from the burial grounds. I know she went to the church, and I know Philberg Bergheimer went to the burial grounds.

Q. Do you recall whether anybody else was in a hack except Philberg Bergheimer and your father and yourself at the time this conversation took place? A. No. I think that lady had 196 gotten out. I think we must have stopped at the house to let her out.

Q. Was this lady you spoke of living in Richmond? A. I don't remember. I just remember about her being dressed in black. I don't remember who she was.

Q. You spoke of stopping at her house. Was that where she was stopping or living? A. I don't remember whether we stopped at her house or whether she left us at the burial grounds, but I know we three came back in the hack together.

Q. Did you speak to this lady at all? A. No, sir; I never said a word to her.

Q. You did not speak to her at all? A. I did not.

Q. Do you recollect whether or not she was a relation of Mr. Bergheimer's? A. All I know is she had a long, black veil on, but I don't know who she was. I thought my father ought to walk with me. I was his close relation and I didn't know who the lady was.

Q. You didn't feel disappointed at all about that? A. No; I walked back with Philberg Bergheimer.

Q. And then this conversation you say took place between you and your father? A. Yes, sir.

Q. You say your father said he wanted to catch a train? A. Yes; he wanted to — back on the evening train.

Q. Do you remember what time that train was to leave?

197 A. No, sir; I could not remember that.

Q. Was that the only time you had seen your father in Richmond? A. No, sir; I met him one day on the street. He was here on a visit. He was with another gentleman, but he spoke to me and passed on by.

Q. Those are the only two occasions on which you saw your father in Richmond? A. And at his mother's death. That was some time before his father's death, and I was quite small then.

Q. On those three occasions? A. Yes, sir.

Q. And, as I understand you, you went to the store to see Mr. Bergheimer, as you say? A. Yes, sir.

Q. And you generally saw him at Galt's jewelry store? A. Yes, sir.

Q. Did you ever see him at any other place? A. No, sir.

Q. And he, as you say, gave you some excuse or other each time or made some promise he did not keep? A. Yes, sir.

Q. Did you, on going back to see him at any other time, ever ask him why he did not keep his promise? A. I would ask him, and he would say that business detained him and he could not keep his engagements.

198 Q. Is that all he would say? A. That is all.

Q. You say he spoke of going behind the counter. Was he waiting on a customer at that time? A. He would leave me there and say he had a little business to attend to in the back part of the store and come back and would stop talking to me again, and he would change the subject and would not listen.

Q. Do you know why it was your mother would go to Woodward & Lothrop's to see him? A. Because he would not see her at the store.

Q. Did she ever go to the store? A. No; she never went there, but we wrote to him to come to the house and he would not do it, and I proposed going down first to ask him if he would see her if she came there. I didn't want her feelings hurt and I left her at Woodward & Lothrop's and walked down to the store and asked him if he would come there to meet her, and he refused.

Q. Did you tell him why your mother did not come down to the store? A. Yes; I told him mamma wanted to get his promise first to meet her, and I told him it had gone on long enough, and if he would come to some agreement, and if he would not come back, would he help to take care of us; that mamma is not able to take care of us; that her health was very bad and would he pay something to support us.

Q. How many times do you suppose it was you went to Woodward & Lothrop's and left your mother there and went on 199 down to Galt's to see him? A. Only once I went to Woodward & Lothrop's, and on one Saturday evening I went down to the store and mamma was in Washington, and I said, "Mamma will go to church at 9 o'clock mass and will you come up to meet us?" and he said, "I will come," and I and my brother and mamma, all three of us, went to church, but he never would come to meet us.

Q. He never would come to church? A. No.

Q. And when you went to the store to see him on those occasions, where did you leave your mother? A. At home.

Q. There is only one time she came down, and that is when she went to Woodward & Lothrop's? A. Yes; at Woodward & Lothrop's.

Q. Your mother always showed you all letters she received from everybody? A. Yes, sir; every letter she got she opened there at home, and in fact I opened most of her mail whenever it came to her, and read it half the time before she ever saw it herself.

Q. Did she ever receive any letters at the store? A. No, sir; all her letters came home.

Q. How do you know she did not? A. If she received them she certainly would bring them home. She brings everything she gets home.

Q. There is nothing to prevent her, if she received a letter 200 at the store, from reading it and not telling you anything about it, is there? She could do it if she wanted to? A. Yes; but I had that much confidence in her to know she would not do anything like that. She has gotten business letters at the store and brought them home.

Q. My question was whether she could not do that and yet you know nothing about it? A. But she did not do so.

Q. She could not do so? A. I didn't say she could not, but she would not. If she would not do that, she would not let us be so free with her mail and see everything she receives.

Q. Have you ever mailed any letters to your father? A. Yes.

Q. When? A. Time and time again, and letters of mine I have written.

Q. Did you ever mail any letters she wrote? A. No, sir; only when she wrote at the bottom of mine.

Q. But you never mailed any letters she wrote to your father? A. I mailed a letter when mamma was at Thalheimer's. I mailed him a letter then asking him if he would not come and join us at Christmas, and she sent him a Christmas card in it.

Q. Is that the only letter you ever recollect mailing to your father from your mother? A. I may have mailed others, but I 201 don't recollect.

Q. Was that all that was in that letter? A. What?

Q. When you spoke of joining you at Christmas. A. It was just to bring us together.

Q. It was a very short letter? A. I suppose it was.

Q. You read it? A. Yes. It was just telling him Christmas was near and how happy he would make his children if he would only come back and bring us together.

Q. It was an invitation to come and meet you at Christmas? A. Yes.

Q. And you say she also sent him a Christmas card? A. Yes, sir.

Q. Did you receive anything from your father at that Christmas? A. At that Christmas?

Q. Yes. A. No; I don't think I receive- anything that Christmas, but the Christmas before that I think I received a present. For the last three Christmases I know he has not sent me anything.

Q. But you say you received a Christmas present from him three years ago. Do you know you received one then? A. Yes; 202 I know I received a Christmas present three years ago.

Q. How old were you when you first spoke to your father about seeing your mother? A. About thirteen years old.

Q. That was along in 1891 or '2, was it? A. Yes, sir.

Q. Now, on this occasion, when you made this visit to your father, where did you get his address? A. From my brother.

Q. And how long had you received the address prior to your going there? A. If I am not mistaken, I got the address from him here and left Richmond the next day and went on to Washington.

Q. Did you go with your mother on that visit? A. No, sir; I went by myself; but mamma had written to him just a week or two before that, asking him if he would like to have her to come and nurse him through his sickness.

Q. Do you know whether he received that letter? A. I could not say that, but it was sent to the store.

Q. As a matter of fact, didn't you hear that he had been ill for quite a while? A. The minute we heard it the first thing we did was to sit down and write to him and ask him if we would be of any assistance to him.

Q. Didn't you know that he was too ill to read any of the 203 letters, or did you hear that? A. No, sir; I didn't know he was too ill to read the letters. We only heard he was sick and had typhoid fever, and we at once wrote to him.

Q. Did you hear at the house he was quite sick when you inquired? A. No, sir; when I got there I asked if Mr. Bergheimer was in, and the lady said no. And I said, "This cannot be so, when Mr. Bergheimer is sick so long and not in." And she said, "He is not here; he is down at the store." I said, "Are you quite sure he is down at the store?" And she said, "He is up in his

room sick." And I said, "I am his daughter and I want to see him." And that is the time she refused to let me see him.

Q. Did you make two visits? A. No; only that one time.

Q. Who was this lady? A. I don't know.

Q. Did she say she was a nurse? A. No, sir; she was the lady that owned the house or kept it.

Q. How do you know that? A. She said it was her house; that is the way I knew it was her's. "It was her house and she had a right to order me out."

Q. Was she present when all this conversation took place between you and your father? A. Yes.

204 Q. What did you say your father did? A. He took me by the arm and took me to the door and said, "I will tell you now, I don't want to have anything to do with them. You tell your mother and the whole family, I don't want to have anything to do with them and I don't care a damn for them, and for them to go to hell." I know he used such a word.

Q. Did this lady stay there and hear all this? A. Yes; and he said, "Shut that door," and she shut the door in my face.

Q. And you are positive he pushed you out, are you? A. Yes.

Q. Was anybody else present besides this lady and your father? A. No, sir.

Q. Did you see any other lady or any gentleman present? A. No, sir; she was the only one I saw.

Q. How close was this lady to you in the parlor at the time this conversation took place? A. She was standing right there with us.

Q. She was standing near enough to hear everything that took place? A. Yes, sir.

Q. And had you ever been to your father's house before this visit that you testified to? A. No, sir.

Q. You had never been there at any other time? A. No, sir.

205 Q. And have never been there since? A. No, sir; I have asked him lots of times to let me come to his house to talk to him, but he never would let me do so.

Q. You knew where he lived, did you? A. Yes; I knew it, because my brother told me where he lived.

Q. Did he say to you on one occasion in the store you had been there and created such a scene there that he did not want it to happen again? A. No, sir; he never said anything to me about it.

Q. Did he say anything to you like that? A. No, sir; because I had not been to the store before I went up to his house.

Q. But you say you had been to the store frequently? A. Yes, sir.

Q. Did he ever say on any of those occasions that you had created a scene there, and he did not want you to come there again? A. No, sir.

Q. Did you ever talk to anybody else in the store besides Mr. Bergheimer? A. I just spoke to them as I passed by.

Q. You had no conversation with them? A. No, sir; only the last time I was there I saw old man Galt and talked to him.

Q. When was that; how long ago? A. When he was sick with the fever.

206 Q. Ever since you can remember, Miss Bergheimer, where have you been living—at your grandfather's house? A. Yes, sir.

Q. And your grandfather, I believe, was in business for a long time? A. Yes; and he failed in business.

Q. But since he failed he has been working at his trade, has he not? A. Yes, sir.

Redirect examination.

By Mr. ALLAN:

Q. When Mr. Bergheimer came down to the door or into the hall, whichever it was, to see you, was he dressed? A. He was dressed; he had on a smoking jacket and his trousers.

Q. What sort of a day was it? A. It was a damp, cold, rainy day.

Q. Did you go to the store to see him that day? A. I went down to the store afterwards and asked if he had been there, and they said he had been there the day before, but he hadn't been there that day.

Recross-examination.

By Mr. FORREST:

Q. Did he have slippers on when he came to the door? A. I didn't notice his feet.

207 Q. Did he have a hat on of any sort? A. No, sir; he just had on a smoking jacket and a shirt and his trousers. That is all I could see.

Q. You didn't notice whether he had on his slippers or not? A. No, sir; I didn't look.

Mr. FORREST: Solicitor for the complainant here enters a general objection to all the testimony given by the witness who was last on the stand on the ground that the same is incompetent and immaterial and irrelevant to the issues now pending, and that at the time the alleged conversation took place between the witness and her father the father's right to a divorce under the laws in force in the District of Columbia had accrued, and under the circumstances appearing in the testimony herein there is no obligation imposed on him by law to take any of the steps suggested by the witness as reasons why the two persons should come together and be united, and at or before the hearing the solicitor for complainant will move to strike the same from the records, and hereby gives notice of such a motion.

Mr. ALLAN: Counsel for the defendant, in reply to said objection, will state that the same is made too late to be a valid legal objection, as the witness who gave the testimony had left the stand, and

208 that there is an agreement between counsel that the commissioner shall sign all the depositions, and that he shall insist on the evidence of this witness as material to the issue and for the reasons above given.

ADELAIDE L. BERGHEIMER,
By JOHN A. SWEENEY, *Examiner.*

209 At the same time and place also appeared LYDIA O'DONNELL, a witness produced in the same behalf, —, being first duly sworn, testified as follows:

Direct examination.

By Mr. ALLAN:

Q. You are the mother of the defendant and cross-petitioner in this suit? A. Yes, sir.

Q. State anything you may know as to their marital relations. A. Well, I can state this: They were married, and shortly after the marriage I had to move my daughter home, and her child was born, and I had to take care of her and her child, and had to take care of them ever since. Her husband never paid a cent of doctor's bills or a cent to any one that done anything for her. She went away from here to Farmville to live, thinking that he would do right and take care of her as he promised to do, and when she got there it was the same as it was before. He did not do anything for her, and she had to sell her furniture to get money enough to get back home.

Mr. FORREST: The answer of the witness is objected to as a voluntary statement, uncalled for by the question, and also because it is plainly on its face hearsay testimony, and therefore incompetent.

Q. Did you hear him promise her to do what was right by 210 her? A. He promised that when he got married.

Mr. FORREST: Answer objected to as not an answer to the question, and as a voluntary statement of the witness.

The WITNESS: You ask me a question and I will answer it (to counsel for complainant).

Q. Did he go to Farmville first or did she go first? A. He went first. He was there a few weeks or months before she went.

Q. Before he left did they talk the matter over? A. I don't know what they did. I did not interfere with their business at all. I know she went on there thinking she could get along and have a good, happy home.

Mr. FORREST: Answer of the witness is objected to as the opinion of the witness, and in the next place because it is purely hearsay evidence and incompetent.

Q. When they went to Farmville how long did they live there together? A. About three months, as near as I can judge.

Mr. FORREST: Answer objected to as incompetent and not based upon personal knowledge.

Q. Do you know when she went there? A. Yes; the 17th day of March.

Q. Do you know when she came back? A. She came back, I think, about the first week of June or the last week of May; somewhere in that neighborhood.

211 Q. When her husband left her in Farmville did he come on to Richmond and make to you any explanation of his reason for leaving Farmville?

Mr. FORREST: Question objected to because there is no testimony so far that the husband ever left her in Farmville if by that is meant he deserted her; and in the next place the witness, it has been shown, has no personal knowledge of what took place in Farmville between the parties to this controversy.

A. No, sir; I did not see sight of him for over a year and a half.

Q. After your daughter came to Richmond from Farmville, did her husband write to her? A. I believe she got a few letters from him; I don't remember how many, but they were very scarce.

Q. Did your daughter write to her husband? A. Yes, sir.

Q. Did you know whether or not she was willing to go to live with him if he would take her back?

Mr. FORREST: That question is objected to as calling for hearsay testimony and as incompetent, and for the further reason that it is an attempt to make testimony by one of the parties of this cause and in her support.

A. Of course, she never objected to going with him. She always was anxious to go back to him on condition that he could take care of her.

Mr. FORREST: Answer objected to for the same reason.

Q. How long after your daughter came back from Farmville did the correspondence from her husband continue? A. Well, 212 I could not tell you how long that was. He wrote to her off and on until after the child was born and then he seemed to slacken off writing and never came near her any until the child was a year and a half old.

Q. Did he come when the child was a year and a half old? A. He came there on an excursion trip.

Q. Did he ask to see her at that time? A. No; I carried the children downstairs in the store and let him look at them.

Q. Did you carry the children down? A. Yes.

Q. Did you refuse to allow him to see her? A. No; she was sick and did not expect him to come to see her. She was sick in bed. She could not come downstairs, and he did not seem to be anxious to see her.

Q. You said he did not ask to see her. A. Yes.

Q. Had he done so would he have been permitted to have seen her? A. If he had wanted to go upstairs to see her he could have done so; yes, sir.

Q. Since he left Farmville has he contributed to her support? A. No, sir.

Q. Has he contributed to the support of the children—towards buying clothes or food? A. No, sir.

213 Q. Or the necessities of life? A. No, sir; not a cent.

Q. Did he give Daniel Bergheimer anything towards his education? A. He sent him \$5 several months to learn shorthand writing, but that was for a very short time, not long enough to learn it, and he had to stop it. My husband and me raised the children. We took the children in charge and raised them.

Q. When she got letters from her husband did she let you read them? A. Well, of course we read the letters and she always told us what was in the letters. We did not read them; she generally told us.

Q. Has she any of the letters now that she received from him? A. Not that I know of. I never paid any attention to that. I don't think she has.

Q. Was there ever any proposition in those letters for her to come and live with him?

Mr. FORREST: That is objected to because the letters are the best evidence, and in the next place there has been no proper foundation laid for any such evidence. The letters have been in the possession of the defendant and it is the duty of the defendant to produce them, and secondary evidence at this stage of the proceeding is not admissible. Question is further objected to as leading and suggestive.

214 Mr. ALLAN: Counsel for defendant and cross-petitioner, in response to the above objection and also to the notice in these proceedings filed to produce certain letters from the petitioner to the defendant and cross-petitioner, says that he is advised by his client that she has not now in her possession any letters written by the defendant to her during the years mentioned in said notice; that while it is true that she received a few letters, the same have been destroyed or lost, and that she denies ever having received any letters from the petitioner offering to provide a home for her at Annapolis, Maryland, or at any other place since the desertion mentioned in her answer herein filed.

Mr. FORREST: Solicitor for the complainant objects to the above statement of counsel, because it is not the proper method of getting proof of the fact on the record; and, secondly, because there has been no testimony offered tending to show the destruction of the letters or any search made for the same or any proper foundation laid to offer secondary evidence of their contents.

A. No; not that I know of. She would be only too willing to go back if he made any good proposition.

Mr. FORREST: Answer objected to for the reasons given and for the further reason that this is hearsay testimony.

Q. Does your daughter live with you? A. Yes, sir; she has been living with me ever since she came from Farmville.

215 Q. If the letters above referred to were in her possession, would you or not know of it? A. Well, they are not in her possession that I know of. They have been destroyed. She burned them up, I suppose, many a day ago, not thinking there would be anything like this going on.

Mr. FORREST: Answer objected to as containing suppositions of the witness and not statements of fact, and therefore incompetent, and the answer is objected to generally as incompetent for the reasons heretofore given.

Q. In the complainant's bill of complaint he states that you refused to allow him to see his wife. What have you to say as to that? A. I didn't do it.

Q. He states that the children were brought down to him by a servant. What have you to say as to that? A. I brought them down myself. I brought the youngest one down on my arms myself.

Q. Has he ever been to see her since he left Farmville, or has he ever called at the house on any occasion other than the occasion you refer to? A. I think he stood at the door once or twice and spoke to Mr. O'Donnell. That is all I know. He was not in the house.

Q. While your daughter and her husband lived in Richmond, at whose residence did they live? A. Well, they lived with his 216 father and mother for a short time. They two lived there.

They lived there, I suppose, about a year or three-quarters of a year; somewhere along there.

Q. What has been your daughter's husband's attitude towards her since their marriage up to the present time? A. Well, I don't know; very neglectful is all I can say.

Cross-examination.

By Mr. FORREST:

Q. Do you remember when it was that your daughter and Mr. Bergheimer were married? A. Of course I do.

Q. When was it? A. The 2nd day of August, 1876.

Q. And as soon as they were married, if I understand you correctly, they went to live with his father and mother? Is that right? A. Yes, sir.

Q. And when did Mr. Bergheimer go to Farmville? A. I don't know whether it was in 1877 or '78.

Q. '78, wasn't it? A. I don't know whether it was '77 or '78. I think it was '77.

Q. At any time during their married life did they ever live at your house? A. Well, I had my daughter home when she was sick a month.

217 Q. Was that before they went to Farmville or before she returned? A. Yes; before they went to Farmville.

Q. Was that at the birth of the first child? A. Yes, sir.

Q. And after that did she go back to live with his father and mother? A. Yes, sir.

Q. Now, you said something about her going to Farmville, as I understand you, in February or March, and returning about the 1st of June? A. Yes, sir.

Q. Now, was that not in the year 1878? A. No. I think it was '77, if I am not mistaken, because I know the first child could not walk.

Q. But you said that they were married in August, 1876, and it could not be in March, 1877? A. It was '78, then.

Q. So that they lived with his father and mother, with the exception of the time that she was at your house, about the time of the birth of the first child, a little over fifteen or sixteen months? A. They were housekeeping about a month—room-keeping, at least—before that.

Q. With that exception, they were living with his father and mother? A. Yes, sir.

Q. Did they go from his father's and mother's to Farmville—I mean did they leave there to go to Farmville? A. No; they were room-keeping.

Q. And after he went did she come to your house, or did she remain at this place where they were rooming? A. No; she was at my house a short time.

Q. As I understand you, Mrs. O'Donnell, you were not present when Mr. and Mrs. Bergheimer were making their arrangements to go to Farmville. A. No.

Q. And of course you don't know what arrangement was made between them about her coming there after he went to Farmville? A. I know he wrote he was going to do better and he would try to provide for her, and that is the reason she went, to try him.

Q. They lived there four or five months? A. No; three months.

Q. Did you visit them in Farmville while they were there? A. No, sir.

Q. And you don't know of your own knowledge how they got along in Farmville? A. No; not by my own sight.

Q. That is what I am asking you; not of your own knowledge? A. No; not my own knowledge.

Q. When was it Mr. Bergheimer came to your house at the time you have referred to to see the two children—in other words, 219 how long was that after your daughter returned from Farmville, if you remember? A. She came direct to my house.

Q. I don't mean Mrs. Bergheimer, I mean Mr. Bergheimer. A. From the time he left Farmville I didn't see sight of him for a year and a half.

Q. And when he came to Richmond on that occasion he came to your house and had this conversation with you, didn't he? A. Yes.

Q. It was your house? A. Yes, sir.

Q. Did you invite him in to see his wife? A. He didn't come in to see his wife at all.

Q. Did you invite him to see his wife? A. Yes; I would like any one to come in that behaves himself.

Q. That is not an answer to my question. Did you invite him upstairs to see his wife? A. No, sir; I did not invite him upstairs.

Q. It was your house? A. It was my house.

Q. Do you think it was a proper thing for you in your own house not to invite him to see his wife? A. I invite anybody in that behaves himself. He did not treat my child right, and I would not invite him upstairs.

Q. Were you present on any occasion when he ill-treated 220 your daughter? A. Do I know if he did? Do I know when my daughter was sick and her child was born and he stayed away two days and a night and he didn't come near to see her or offer a dollar towards it? And that was treating her bad enough.

Q. That is not an answer to my question. A. Well.

Mr. FORREST: Note an objection to the answer as not responsive to the question, but a voluntary statement of the witness.

Q. Were you present at any time when Mr. Bergheimer ever ill-treated your daughter? A. Of course, I didn't see it.

Q. That is what I am asking you. A. No.

Q. If that is so, why didn't you invite him to see her? A. He didn't want to see her.

Q. How do you know? A. He didn't ask to see her.

Q. It was your house, and don't you think it was a proper thing for you to invite him upstairs to see your daughter, he being her husband? A. That man didn't want to see his wife and didn't love his wife enough to ask for her, and he ought not to get to see her.

Q. What do you suppose he came to the house for? A. I don't know; curiosity, I suppose.

221 Q. Is that all? A. Yes.

Q. You knew he was living in Annapolis? A. I didn't know anything about his affairs.

Q. Did you know that he left this vicinity? A. No, sir.

Q. You didn't know anything about it? A. I did not.

Q. Did you suppose he was living in Richmond? A. I knew he was not living in Richmond.

Q. Where was he living? A. First one place and then another.

Q. You don't know he was living in Annapolis when he came up to your house? A. I don't think he was.

Q. You don't think he was? A. No.

Q. That is all you know? A. He may have been living in Alexandria or somewhere else. I don't know.

Q. That is the way you have been making these other statements, because you think so? A. Exactly every word I said is the truth—the statements I made.

Q. Did anybody tell you he was living in Alexandria? A. Yes.

Q. Who? A. People not in Richmond lived there.

222 Q. Tell me who told you he was living in Alexandria.

A. I cannot remember the names now. Mr. Denegri is one. He lives in Baltimore.

Q. Can you tell me anybody who now lives in Richmond who told you? A. I cannot tell you anybody who lives in Richmond.

Q. Can you tell me anybody outside of that gentleman? A. No, sir.

Q. Can you tell me anybody else who told you? A. That man.

Q. Is that man still living? A. He was in Baltimore.

Q. Is he still living? A. I don't know. I haven't heard from him for four or five years.

Q. Who met Mr. Bergheimer at the door when he came there to the house? A. My servant.

Q. Who was that? A. A colored girl.

Q. What was her name? A. Her name was Lucy, but she is dead.

Q. When did she die? A. Four or five years ago.

Q. Where was your husband at the time? A. Upstairs in the house, eating breakfast.

Q. Did the colored girl know Mr. Bergheimer? A. She certainly knew him.

223 Q. Did she tell you Mr. Bergheimer was down there? A. Yes.

Q. What else? A. That is all. She said Mr. Bergheimer was at the door.

Q. She said nothing else to you? A. No, sir.

Q. Did you come down? A. I came down.

Q. Did you come down alone? A. Yes; I came down alone.

Q. What did Mr. Bergheimer say to you? A. He asked how everybody was, and I asked who did he want to see, and he said he didn't want to see anybody in particular, and I asked him if he wanted to see the children, and he said he did, and I brought the children down.

Q. He asked how every one was? A. Yes.

Q. What did you say to that? A. I told him.

Q. What did you say? A. I said some were sick and some were well.

Q. Who was sick? A. Louise.

Q. You didn't tell him Louise was sick? A. I said some were sick and some are well.

Q. Did you tell him who was sick? A. I don't know whether I did or not.

224 Q. How did he know his wife was sick? A. He knew it.

Q. He didn't know it from you? A. No.

Q. From whom did he know it? A. I suppose my husband came down.

Q. Was your husband there? A. Yes; he came downstairs.

Q. How soon after Mr. Bergheimer came was that? A. As soon as he knew he was there.

Q. Who told him? A. The servant.

Q. How do you know the servant told him? A. Wasn't I upstairs, too?

Q. Did Mr. Bergheimer come upstairs? A. He was downstairs.

Q. How do you know the servant told your husband Mr. Bergheimer was downstairs? A. We were all in the room together.

Q. Did she tell him? A. She came and told every one at the breakfast table.

Q. Where was your daughter at that time? A. In the front room, sir.

Q. Next to the dining-room? A. No; in the front part of the house.

Q. Upstairs or downstairs? A. We didn't have any downstairs chambers.

225 Q. She was upstairs in the front room? A. Yes.

Q. Which season of the year was it? A. I don't know. I know it was the season that excursions come to Richmond.

Q. It was in the summer time? A. Yes.

Q. Don't you remember it was on the 3rd of July, 1879? A. I don't remember. I think it was on the 3rd or 4th of July, I don't know which.

Q. Did he call more than once at that time? A. That is the only time I saw him, and that is the only time he came to the house.

Q. That he ever came to the house? A. Well, he was at the front door once or twice after that—several months afterwards—just about two or three months.

Q. Did you see him? A. I saw him at a distance.

Q. Where were you? A. Back in the yard.

Q. Did you speak to him? A. No; I was back in the yard.

Q. Who was talking to him? A. My husband.

Q. And how long did Mr. Bergheimer stay there? A. About five minutes.

Q. Now, you say that happened on one or two occasions 226 that your husband was talking to him at the door? A. It might be one or two occasions. I know it was one occasion. He may have been there once or twice, but it was at different times, though.

Q. Well, after he said he did not come to see anybody in particular, what did you say? A. I showed him the children and let him go.

Q. Did he ask for the children? A. I asked him if he wanted to see them.

Q. You asked him that? A. Yes; I thought it was a father's duty to see his children.

Q. Was it not a husband's duty to see his wife? A. If he wanted to see his wife he could have asked for her.

Q. But you have testified already, Mrs. O'Donnell, that his wife was always very anxious to go to him? A. So I do.

Q. Why didn't you tell her he was down at the door? A. She could not get out of bed.

Q. Why didn't you ask him to come upstairs to see her, if you knew she was very anxious to see him? A. I don't know what is the reason I didn't ask him. I knew very well he did not want to come upstairs.

Q. How did you know that? A. I knew it.

227 Q. How? A. Because he mistreated her and did not attend to her and provide for her.

Q. How did he mistreat her? A. If you were not providing for your wife I would think you were mistreating her now.

Q. Did he say anything that day when he came to the house? A. He didn't get a chance.

Q. And you didn't give him a chance to say anything? A. If he didn't want to see her I was not going to invite him.

Q. Why did you suggest to bring down the children to see him? A. Because I thought it was his duty to see the children. He hadn't seen the boy from the time it was nine months and he didn't see his daughter till she was a year and a half old, and he never paid a cent for providing for them. I went there and asked him eight or nine years ago to do something for them and he refused.

Q. Where did you see him? A. In Washington.

Q. Whereabouts? A. In the store.

Q. Was there anybody with you? A. Yes, sir; there was a lady with me.

Q. Who was the lady? A. Mrs. McClelland, and he flatly refused to do a thing for his wife and children.

228 Q. That was long after she failed to go to Annapolis, was it not? A. It was eight or nine years ago.

Q. Don't you know she wrote a letter to Annapolis saying she would never leave Richmond to go to Annapolis? A. I don't know anything about that matter.

Q. Did you ever hear of such a letter? A. No, sir.

Q. Never did? A. No, sir.

Q. Your attention has never been called to it by your daughter that there is said to be such a letter? A. I don't know anything about that. I don't remember it.

Q. That is not my question. Do you mean to say your daughter has not told you that in this case there has something been said about a letter she is said to have written to her husband in Annapolis? A. If I did I don't remember it.

Q. Would you be likely to remember it if you did? A. I would be apt to remember it.

Q. But you say you don't remember it. A. I do not.

Q. Madam, this is a matter certainly within your knowledge. A. I don't remember one thing twenty years ago about a matter of this kind.

229 Q. Haven't you heard anything about the case going on in Washington? A. No, sir; I never troubled myself about the letters.

Q. You never heard anything about letters she sent? A. I know she wrote several letters asking him to take care of her and the children, but she never got an answer, and that is all I know.

Mr. FORREST: Objected to as a voluntary statement of the witness and referring to letters not produced and no notice for their production filed.

Q. You say you went there about nine years ago to see him? A. Yes.

Q. Is that the only time you ever went to see him? A. Yes.

Mr. FORREST: All testimony in reference to what took place nine years ago is objected to as incompetent, immaterial, and irrelevant to the issues between the parties, for the reasons heretofore given in objections to such testimony.

Mr. ALLAN: Counsel for defendant and cross-petitioner states that the evidence is brought out by counsel for the petitioner, and he is bound by the statement made, and they are perfectly competent and material to the issue.

Mr. FORREST: Counsel for the complainant states that he never knew of a case where he was bound by the testimony of a witness, being a voluntary statement and incompetent.

Q. Did you ever look in your house, Mrs. O'Donnell, for 230 any letters that Mr. Bergheimer may have written to his wife? A. No, sir; I never meddled, myself, with other people's business.

Q. You don't know, then, whether any such letters as he may have written to her have been lost or destroyed? A. I do not. I know if she received any such letters I would see them. If they came to the store I would see them.

Q. The store you now refer to is not the store where your daughter has been working for some time? A. No, sir.

Q. I understood you in your direct examination to say that your daughter was sick at the time her husband called, and she did not expect him, meaning Mr. Bergheimer, to come to see her. A. No.

Q. What did you mean by that? A. Because she did not know he was going to be in town; did not know or dream he was in town. She thought he ought to write her a letter.

Q. Is that any reason why he could not see her if she wanted him to? A. Nobody hindered him from seeing her if he asked for her.

Q. You told of a conversation that took place at the house on that occasion? A. I had very few words to say. I showed him the children, and asked him what kind of a father he was 231 not to take care of his children and not come to see them for a year and a half and not send them a cent of money.

Q. What did he say to that? A. He did not say a word, and Mr. O'Donnell came down and told him the quicker he got out of town the better.

Q. In your house? A. Yes, sir.

Q. And in your presence? A. No; not in my presence, but he came upstairs and told me.

Mr. FORREST: Objected to as hearsay.

The WITNESS: He told me.

Q. You didn't hear it? A. No, sir.

Q. You have been talking in your testimony about what other people told you? A. I am telling you what I know myself.

Q. What part of your testimony have you heard from somebody else? A. Only I heard he was in Alexandria; that is all I know I heard from somebody else.

Q. Except as it may appear from the testimony; is that what you mean? A. Yes; I know well enough he did not do right.

Q. That is your opinion about it? A. Yes.

Q. And you have some feeling about it? A. And I have plenty of witnesses.

232 Q. But you have some feeling? A. I don't know about that. Everybody has their own feeling.

Q. You have some feeling against him on that account? A. If you had a daughter who was treated bad, wouldn't you have feelings, too?

Q. That is not answering my question. A. Of course, I have feeling.

Q. And you don't feel kindly towards him? A. No; I don't feel kindly towards him.

Q. And you gave your testimony in that spirit? A. No. I say this was the truth.

Q. But you gave your testimony in this case feeling, as you do, not kindly towards him? A. I feel as kind towards him as I would any other time, but I want justice.

Q. But you state you don't feel kindly towards him? A. Yes; in seeing everybody get their rights.

Q. What do you see now about not getting their rights? A. He is not doing justice to my daughter.

Q. Only in what you said? A. I am telling the truth—what I said.

Q. You say your daughter got a few letters from her husband, but you don't know how many. Do you remember where the letters came from? I mean whether they came from one place or another—what the postmark was. A. No; I don't remember.

Q. Did you read the letters yourself or did she merely read 233 them and tell you the contents? A. She didn't tell me the contents.

Q. Did she ever read one to you? A. Not that I know of.

Mr. FORREST: Answers of the witness heretofore given in respect to letters are objected to as hearsay.

LYDIA O'DONNELL,
By JOHN A. SWEENEY, *Examiner.*

234 At the same time and place and in the presence of the same parties also appeared LOUISE R. BERGHEIMER, the defendant and cross-petitioner herein, being produced as a witness on her own behalf, and who, having been first duly sworn, testified as follows:

Mr. ALLAN: Counsel for the defendant and cross-petitioner, not waiving their objection to the admissibility of the deposition of the petitioner, expressly insisting upon the same, in view of the action of the court in reserving until final hearing the question of suppressing the same, in order to preserve the rights of the defendant and to have her testimony read should it be held that the parties hereto are competent to testify, proceed to examine the defendant and cross-petitioner as a witness in her own behalf.

Direct examination.

By Mr. ALLAN:

Q. Mrs. Bergheimer, you are the defendant in this case? A. Yes, sir.

Mr. FORREST: Solicitor for the complainant objects to this witness testifying, as well as to any testimony she may give, on the ground that it appears she is at present the wife of the complainant, and under the laws in force in the District of Columbia she is not a competent witness to testify in this case, and at or before the hearing a motion will be made to strike out or suppress the said 235 deposition.

Q. When were you married to the complainant in this cause? A. The 17th of August, 1876.

Q. Where did you live after you were married? A. With his father and mother.

Mr. FORREST: Counsel for the complainant says, without continually renewing these objections during the course of this testimony, he enters this general objection now to all the testimony as though he had specifically objected to each particular question put to, and answer given by the witness, on the ground that the witness is not competent to testify, nor can her testimony be received in this cause.

Q. How long did you live with his father and mother? A. I judge it was about six or seven months.

Q. After you lived with them where did you room? A. We took rooms on Broad street.

Q. Did you ever live in Farmville? A. Yes, sir.

Q. Do you remember when you moved to Farmville? A. What year, you mean?

Q. Yes. A. The latter part of 1877, I judge. I was not there a long time.

Q. Did you or your husband go there first? A. He went there first.

236 Q. How long did you live in Farmville? A. About four months. I don't think it was any longer than that.

Q. Where did you live after you left Farmville? A. I came direct home.

Q. Since that time have you received any letters from your husband? A. One or two; very few.

Q. Did you receive any letters from him since he has been in Washington? A. No, sir.

Q. Did you ever receive a letter from him while in Baltimore? A. From Annapolis I received some letters. I did not receive any from him in Baltimore.

Q. Have you those letters now? A. No. I destroyed all those letters about three years ago. They accumulated, and I destroyed them all.

Q. And then, as I understand you, you destroyed all the letters you had from him? A. All the letters. I have no letters whatever from him.

Mr. ALLAN: Counsel for defendant and cross-petitioner, in response to the notice to produce certain letters from the petitioner to her, which notice has been filed in the case, and also noted on the record in the taking of the depositions, says he is advised and by this evidence it is shown that the defendant and cross-petitioner has not now in her possession any letters written by the complainant to her during the years mentioned in said notice, but she admits she received a few letters, but the same have been destroyed.

Q. Did your husband ever write to you to come to live with him after he left Farmville? A. He wrote that one letter demanding me, and I was in no fit condition to come and had no money. I could not go in the dark, I am sure, and no support, and nothing to pay my expenses or anything else.

Q. After he left Farmville did he ever send you any money for your support or the support of your children? A. No, sir; I have had no support whatever from him.

Q. Did your husband ever come to see you after he left you in Farmville? A. Only that one occasion when he came to see the children and I was sick in bed. I was too sick to be notified of it until after he was gone.

Q. Did you know he was there at the time he was there? A. No, sir; not till afterwards.

Q. Please state under what circumstances your husband left Farmville. A. Well, he was doing business up there at the time and seemed to have gotten himself in some indebtedness. He made up his mind hastily to leave. He told me Saturday evening, and Sunday evening he left. He told me to dispose of the furniture and pay his debts as much as possible, and I came down and handed the money to his father.

238 Q. What was his business in Farmville? A. Carrying on the jewelry business, and he could have done very nicely there.

Q. He could have done very nicely there? A. Yes.

Q. Did he succeed in Farmville? A. Well, he could have made a success of it if he attended to it right.

Q. What do you mean, if he attended to it right? A. Because he never was at his business attending to it right. He was going around frolicking with men.

Q. State what you mean by going around frolicking with men to have caused him to fail in business.

Mr. FORREST: Objected to because the witness has not stated that was the cause of his failing in business.

Mr. ALLAN: Question withdrawn.

Q. State what you mean by going around frolicking with men. A. I mean gambling and staying out at nights and neglecting me, going out in the morning and coming back the next morning, and coming in under the influence of liquor.

Q. Do I understand you to say that he would be away from you all night? A. Yes, sir; many and many a night till 4 o'clock in the morning.

Q. Did he make an assignment in Farmville and try to settle it as best he could with his creditors?

239 Mr. FORREST: Objected to because if such assignment was made the assignment itself is the best evidence.

A. Not to my knowledge. I know we left things there, at Farmville, at the store, but I never knew what became of them. I know there was a large stock. I don't know who took the things or anything else.

Q. Was there an agreement between you as to his leaving Farmville? If so, please state what that agreement was. A. I don't know why he left, because I know he could have made his business a success; but after he said he was going to go and had his bills on hand I said, Go on; and he told me to sell the furniture and go back home, and when he demanded me to come in that one letter I told him I could not come.

Q. Do I understand you to say that you agreed he should go, or did you object to his going? A. I objected to his going, but after his saying he was going I said, Go.

Q. When he left Richmond to go to Farmville did he make any provision to settle with his creditors here before leaving?

Mr. FORREST: Objected to as not a matter in issue in this cause or testimony bearing upon same has no tendency whatever to enlighten the issue before the court.

A. No, sir.

Q. Mrs. Bergheimer, have you ever refused to live with him 240 since the separation you mentioned in Farmville? A. Only through the demand in that letter. I said I could not, as under the circumstances I was not fit to go, and I told him if he makes provisions satisfactory to me I would be more than willing

to live with him. I was always anxious to live with him and with my children, but I could not travel in the dark without a cent to pay the indebtedness, and in my condition at the time I could not go.

Q. What was your condition at the time you wrote that letter?
A. I was pregnant with my daughter.

Q. Have you written him since that letter you referred to or made any efforts to have yourselves reunited? A. I have gone with the children to Washington and asked him to meet me and have a talk, and at the time I met him in the Smithsonian grounds I could not get any conversation out of him in regard to anything. He was always in a hurry and could not see me or talk to me, and Christmas a year ago I wrote him a letter, begging him to make a happy Christmas for me, and not replying I sent a note a year ago to him.

Mr. FORREST: Statement of the witness in regard to letters and their contents objected to because the proper foundation has not been laid for the interposition of secondary evidence, no notice to produce the letters having been served on the complainant.

Q. Then, as I understand it, you offered to bring about a happy reunion?

241 Mr. FORREST: Question objected to as leading and suggestive and not a proper method of examining counsel's own witness.

A. Yes, sir.

Q. Have you or not made any effort to bring about a reunion of yourself and husband? A. I made efforts by writing to him.

Mr. FORREST: Answer objected to for the reason that it is an attempt to state the contents of letters not produced and their absence not accounted for, and the proper foundation not being laid for secondary evidence.

Q. Have you ever seen your husband since he left you in Farmville? And, if so, state at what times and under what circumstances. A. He came to Richmond about ten years ago and came to the store I was working at—Breedon & Tally's—and I was standing at the counter, and he asked me what I was doing there. I said I was making a living for myself and children; more than he would do. I asked him how long he would stay in the city, as I wanted to talk with him, and he said, "I am going off on an early train and I will have no time to talk;" and his own aunt sent him over to see me and talk to me.

Mr. FORREST: Answer objected to as based upon hearsay testimony.

Q. Did he tell you that his aunt sent him over there? A. Yes, sir.

242 Q. What time of day was it when he called? A. I judge it was between twelve and one o'clock, so far as I remember.

Q. Did he say where he had to go? A. No, sir; he didn't tell me his business. He was going back to Washington.

Q. He was going back to Washington? A. Yes, sir.

Q. Have you seen him at any other time? A. Since then?

Q. Yes. A. I saw him when he was here to his father's funeral, and I saw him the summer a year ago standing at the door when I went to Washington. The last note I wrote to him to meet me at Woodward and Lothrop's. I saw him standing at the door. I haven't seen him since.

Q. Did he call to see you when he was here at his father's funeral? A. No, sir.

Q. You said you sent him a note. A. Yes, sir; I sent it by mail.

Q. What was your object in sending him this note? A. I wanted to see if we could not come together.

Q. Did he meet you and talk to you about it? A. No, sir; he did not meet me. I stayed downtown fully two hours.

Q. Did you ever send your daughter or son to see him? A. Yes, sir. They never went to Washington but what they went to see him in my behalf as well as in their own.

243 Mr. FORREST: Answer objected to because evidently it is made upon hearsay testimony and not upon the personal knowledge of the witness.

Q. I asked if you ever sent them to see him. A. Yes, sir; and made them go to Washington especially so they could go down and see him.

Mr. FORREST: Answer objected to as hearsay testimony.

Q. Do you remember on one occasion, in 1891, when you and your husband met in Washington and went over into the Smithsonian grounds?

Mr. FORREST: Objected to as leading and suggestive, and counsel suggests that, this being his own witness and his own client, leading questions should not be put.

Mr. ALLAN: Counsel for the defendant will state that when this question was asked the previous witness counsel for complainant insisted on time and place being stated, and he therefore simply asks this witness the question in the manner he did for the purpose of saving *enumerable* objections made by counsel for the complainant.

A. Yes, sir.

Q. Do you ever remember meeting your husband in Washington at any other time? A. Only on one occasion. I went to church once and I met him at the church. I did not meet him myself, but my daughter walked half way up where I was stopping, and after she got ready to say good-bye I stepped up and asked him if I could see him that evening, and he said no; that he had an engagement for the evening and I could not see him. The

other engagements he made with his daughter to meet her at church, he never came near her.

Mr. FORREST: Objected to as being based upon hearsay testimony.

Q. What occurred at this meeting in Washington in 1891 when you and your husband went in the Smithsonian grounds? A. I could not get into any conversation whatever. I merely said, How do you do? and told him how the children were. The children got a little distance and played, and I never could get a word out of him. I saw he was not going to say a word to me, and I got the children and went home. I could never get him into any conversation whatever, no matter which way I tried.

Q. Did you at that time ask him any questions? A. He did not give me an opportunity to talk to him.

Q. State whether or not you ever had any conversation with him in Washington other than the one referred to in the Smithsonian grounds. A. No, sir.

Q. When he was with your daughter on the night you referred to did he tell you in your hearing that you could not see him?

Mr. FORREST: Objected to as leading and suggestive and because the witness has not stated it was at night.

A. It was church time when I asked him to make an engagement for the evening.

245 Q. What did he say? A. He said no, he had a previous engagement and could not come up.

Q. Did your husband write to you often while he was in Annapolis? A. I did not get many letters.

Q. Did you ever get any letter from him offering to take care of the children?

Mr. FORREST: Objected to for the reasons already given and as leading and suggestive.

A. No, sir.

Q. Were you willing to go and live with him and take your children with you if he had provided a proper place for you to live?

A. I was always willing. If he would give me a proper place and give me proper attention, I was willing to go.

Q. Did you ever decline to live with him when he did so? A. He never made the proposition that he would give me an honorable living. I could not go in the darkness without any provision beforehand. I have been always too willing to go and make a happy home with him and the children.

Q. Did your husband ever write to you and say he had made arrangements to settle in Annapolis and would like to have you come and live with him and join him there?

Mr. FORREST: Same objection to the question and answer because the proper foundation has not been laid.

246 Q. After the letter you wrote to him in reply to the letter in which you say he demanded that you should come to Annapolis to live, did you continue to write to him? A. No, sir. I wrote to him and told him if a husband would command that I would not hear it, because I had not means to pay my debts here and risk myself to go and buy things, and I would not go.

Mr. FORREST: Objected to for the same reason, as an attempt to, prove the contents of a written document not produced, and no foundation having been made for such evidence, and because no notice has been given to produce any such letters.

Q. Did you continue to write to your husband after that letter you wrote to him in reply to his letter demanding you should come on to Annapolis? A. Yes; I wrote to him since.

Q. Did he ever, after that letter you spoke of demanding you to come on, send you money to come? A. No, sir; not a cent.

Q. Did he send you money in that letter to come?

Mr. FORREST: Objected to as immaterial and because the defendant had previously up to that time refused to come, and he was then under no obligation thereafter to request her to come or send her money to come.

A. No, sir.

Q. Had he ever sent you money to come to Annapolis? A. No, sir; he never has.

Q. Did he know your condition here? A. Yes.

247 Q. Did he know your physical condition? A. Yes, sir.

Q. Did he know your financial condition? A. Yes, sir.

Mr. FORREST: These questions are all objected to as certainly leading and suggestive, and as calling for the answer from the witness yes or no.

Q. Did you ever refuse to see your husband? A. No, sir.

Q. What has been your husband's attitude towards you since he left you in Farmville? A. In what way?

Q. Has he been kind, loving, and affectionate? A. Not at all.

Q. Then what has been his attitude towards you? A. Silence on his side altogether.

Q. Have you ever visited Washington without making some effort to see your husband? A. I have never been to Washington in my life but what I tried to see him. I always tried to see him.

Q. Why did you not go to the store? A. For the simple reason I felt irksome of going, because I was afraid I would be insulted there before the other men. I never met any of the firm, and I thought it was his duty to carry me down and introduce me to them.

Q. While you were there did he ever come up and see you? A. No, sir.

248 Q. Did he know you were in the city? A. Yes; he always knew I was in the city.

Q. Has he ever contributed anything to the support of your children since he left you in Farmville? A. No, sir.

Q. Have you ever offered to him personally to reunite and forget the past? A. No, sir; not in person. He never gave me the opportunity to talk with him.

Q. Have you ever tried to do so? A. I tried to do so by leaving notes and asking him to meet me and then I could have an opportunity to tell him.

Q. I understood you to say he has not written to you after he left Farmville.

Mr. FORREST: Objected to because the witness has already stated that he wrote to her while he was in Annapolis.

Mr. ALLAN: I haven't finished the question, but I will withdraw it to save time.

Q. Did he ever inform you that he was prepared to and would support you and the children? A. No, sir.

Q. Did you at any time other than the times referred to by you refuse to go and live with him? A. Did I ever refuse to go and live with him previous to that?

Q. Other than the time referred to in this letter? A. No, sir; because he never asked me to come.

249 Q. And there was a letter introduced here in evidence in which you said that, "but to leave R. again, never." What do you mean by that statement in the letter?

Mr. FORREST: That is objected to because there is no explanation necessary. The letter speaks for itself and is plain and does not require any explanation.

A. I mean by that, Mr. Allan, that I never intended to leave Richmond under the circumstances, not knowing how I would be placed when I got there, having two children and nothing to pay back bills I had to pay; and I didn't know what provisions I would meet with there, so I determined to stay here.

Mr. FORREST: Answer is objected to for the reason, among others, that the reasons stated now by the witness do not appear in the letter and were not communicated, so far as the record discloses, to the complainant, and is therefore immaterial and irrelevant.

Q. Did you ever tell any one that you would not go back and live with him, or convey any such idea? A. No, sir.

Q. Have you been willing to live with him? A. I have always been willing to go back to him whenever he made proper provisions for me and my children. This case I should never have brought up.

Q. Do you know when your husband called here a number of years ago to see the children? What was your physical condition at that time? A. Very bad. I have never gotten over it yet.

250 Q. Were you sick in bed or not? A. Yes, sir; I was sick in bed.

Cross-examination.

By Mr. FORREST:

Q. You say, Mrs. Bergheimer, you destroyed letters about three years ago? A. Yes, sir.

Q. Did you read them before you destroyed them? A. No, sir; I just bundled them all up together and destroyed them.

Q. Where did you gather them from? A. My trunk.

Q. Did you look at any of the letters before you destroyed them? A. No, sir; I did not. They had given me enough pain as it was.

Q. You had letters from different persons? A. No, sir; I had no communication from any one.

Q. Have you never received letters from Washington from Mrs. McClelland? A. I received letters from her and destroyed them after reading them.

Q. And didn't you read any of those letters when you gathered them from your trunk? A. No, sir; the letters I received from Mr. Bergheimer I kept in my trunk.

Q. Why did you destroy them? A. Because I wanted to make room in the trunk, and I got tired of them being in the 251 trunk. I had no cause whatever to do it.

Q. Because there were so many of them? A. There were not so many; but I piled them up and put them in the fire.

Q. Because they took up so much room in the trunk; is that the reason? A. I got tired of looking at them.

Q. When did you look at them before you destroyed them? A. Whenever I opened the trunk they were before my eyes, and I could not help looking at them.

Q. Did you read them? A. No, sir.

Q. The only thing before your eyes were the envelopes containing the letters; is that right? A. Yes.

Q. Did you look at the outside of the envelopes before you destroyed them? A. No, sir; I paid no attention to them, but put them in a pile and destroyed them.

Q. As I understand you, you took whatever letters you had in the trunk and put them in a pile and destroyed them? A. Yes.

Q. No matter whom they were from? A. No, sir; I destroyed them.

Q. This letter dated Richmond, March 11th, 1879, and addressed to your husband and signed "your wife" is your letter? 252 (indicating Exhibit A)? A. Yes, sir.

Q. You have seen that letter? A. Yes, sir.

Q. Had you, before the receipt of the letter to which this is an answer, been requested by your husband to go to Annapolis? A. No, sir.

Q. Never at any time before you received this letter? A. No, sir; he never asked me to come there.

Q. Did he ever ask you to come to any other place except Annapolis to live with him? A. No, sir.

Q. And then tell me what you mean by saying in this letter, "I

have told you over and again that I would never leave R." What do you mean by that? A. I meant I never would leave Richmond unless I knew I had something better before me and was not going blind without knowing how I would be circumstanced.

Q. What did you mean by saying "over and again" you never would leave Richmond? A. I told him that many times before he thought of leaving.

Q. You had made up your mind? A. Under the circumstances, I never intended to leave Richmond.

Q. Did you know the circumstances that existed in Annapolis?

A. His circumstances?

253 Q. The circumstances that existed when he asked you?

A. I didn't know he had anything more than he had in Farmville.

Q. Did you know he had made provision? A. No, sir; I did not.

Q. What was I going to ask you? You answered before I finished my question. Did you know he had made provision at a boarding-house for you and the children? A. No, sir.

Q. Why do you say under the circumstances you would not go when you didn't know what arrangements he had made? A. Because I had been so neglected I did not want to leave here again with two children.

Q. Then it was your determination not to leave even without inquiry into the circumstances? A. No; I did not intend to leave Richmond unless I knew we would be more comfortably fixed.

Q. As to whether or not you would be comfortably fixed was for you to decide? A. I decided to stay home, where I would have comfort with my children.

Q. As to whether or not you would be comfortably fixed you took upon yourself to decide? A. Yes, sir.

Q. Or without going to Annapolis and finding out whether you would be comfortably fixed or not? A. Yes.

Q. And do I understand also from your answer in the direct examination that you considered yourself as the sole judge of what should be a proper place? A. Yes.

Q. You did not think your husband could determine that, being in Annapolis himself? A. No, sir; I didn't think he could determine it, because I didn't know the situation myself.

Q. Did you know anybody in Annapolis? A. No, sir.

Q. Did you make any inquiries as to what arrangement your husband had made? A. No, sir.

Q. And, so far as that is concerned, you knew nothing about it? A. No, sir.

Q. When you say in your letter, "I would never leave Richmond," that means you would never leave it under any circumstances? A. It did not mean that at all.

Q. Do you say anything in this letter about making arrangements in Annapolis or anything of the sort, or that the arrangements were not sufficient? A. No arrangements ever were made.

Q. How do you know that? A. Because he never wrote it to me.

Q. He wrote to you to come on? A. No, sir.

Q. What do you mean by saying, then, "Now, Henry, I 255 have told you over and again I would never leave Richmond"? Was not that in answer to a request by him to come to Annapolis? A. I didn't say what it was.

Q. What did you mean by saying, then, if he hadn't requested you to come to Annapolis, that you never would leave Richmond? A. I meant I never would leave Richmond without proper provision. You could make that application to either thing.

Q. And again you say in the same letter, "I will say to you I will stay where I am. I have a good home, and I can get all I want." Now, if I am correct in your testimony, you say he did not ask you. Do you say that was not written in reply to his request to come? A. I never seen it written in any of his letters asking me to come. This letter I wrote at my own dictation, that I never would leave Richmond.

Q. This letter starts off, "Dear husband: I received your letter yesterday." Is not that a request to come? A. No, sir.

Q. What was in that letter? A. I don't know; in twenty-odd years I cannot tell what was in it.

Q. Let me ask you, also, if you did not receive such a letter 256 from this statement of yours, "If you wish to see me you can come and work here"? Didn't you mean by that you would not go to see him elsewhere? A. No, sir; because he came here and tried to get a situation and no one would give it to him.

Q. He could not get employment in Richmond? A. He could at one time.

Q. You say he came here and no one would give him employment. I say now he could not get employment, could he? A. He could have gotten employment?

Q. Do you say he could have got employment, when you also say people would not give him employment? A. That was before he went away.

Q. Then he could not get employment? A. No sir.

Q. How did you expect he was going to support you here if he could not get employment? A. He had no reason to break up in the first place.

Q. Let me also ask you what you mean by this, "But to leave Richmond again, never." Didn't you mean by that you never intended to leave Richmond under any circumstances? A. No, sir.

Q. What did you mean by that? A. At that time I never intended to leave Richmond unless I saw something brighter for my future. If he had written and told me he could make me a comfortable home and do justice to me and the children, I would go 257 with him.

Q. Didn't he tell you he had made arrangements? A. No, sir.

Q. He asked you to come on? A. No, sir; in none of his letters.

Q. After you returned to Richmond from Farmville, did you hear

from your husband in Washington? A. No, sir; I heard from him once or twice in Annapolis.

Q. You didn't hear from him in Washington at all? A. No, sir; I don't remember letters coming from Washington.

Q. Do you remember his sending you any Christmas gift of any sort at Christmas of 1878? A. No, sir; he never sent me any Christmas gift.

Q. He never sent you a Christmas gift? A. No, sir; he sent me a birthday present, a pair of cuff buttons.

Q. When was your birthday? A. I don't remember what year it was.

Q. What does this refer to in this letter, wherein you state, "I am very sorry you sent me anything Christmas for I have never been able to put the scissors in my dress, and what you sent did not amount to \$25?" A. He sent me a dress and a few things, but it was not at Christmas, according to my recollection.

Q. What did you mean by saying you were very sorry he 258 sent you anything Christmas? A. I don't think it was

Christmas. I don't think it was on Christmas I got the gift. I don't think the things he sent were anywhere near Christmas, because I did not take any note of it.

Q. That is the present you referred to in your testimony as having been given on your birthday? A. No, sir; that was a pair of cuff buttons.

Q. Didn't he send you a dress at Christmas? A. No, sir. He sent a package, but I don't think it was at Christmas. I remember a cheap shawl.

Q. Don't you think your recollection in March, 1879, is a little better than it is now as to what he sent you then? A. I think I have had enough on my mind to erase some other things in so many years.

Q. Would you not have stated it more correctly when you said here, "I am very sorry you sent me anything Christmas"? A. It may have been at Christmas, but I don't remember it being at Christmas. It may have been a Christmas present.

Q. In the bill in this case it is alleged that you wrote a letter to your husband refusing to come to Annapolis, saying that you would not leave the city of Richmond, and in your answer to that bill you state it is not true that you ever wrote to the petitioner refusing to 259 come to Annapolis. Do you say, then, that is true in view of the letter which I called your attention to? A. Well, I

refused to leave Richmond until I knew he could make me a comfortable home, but I never remember his writing anything to me that he had provided anything for me to this day.

Q. I don't know that that is in answer to my question.

Mr. ALLAN: I think it is, if you read the answer.

Q. In the bill it is alleged that you wrote a letter to your husband in Annapolis, saying that you would not leave Richmond, and in your answer to that part of the paragraph of the bill you say that

it is not true you ever wrote to the petitioner refusing to come to Annapolis. Now, in view of this letter, in which you say you never would leave Richmond, do you now say it is not true that you ever wrote to him refusing to come to Annapolis? My question, in brief, is, Did you not say in your letter you would not leave Richmond, notwithstanding your answer in this case? A. Yes; I said in that letter I would not leave Richmond.

Q. After you left Richmond and went to Farmville to live, did you and your husband keep house there? A. Yes, sir; for a while.

Q. For a period of about three months? A. Yes.

Q. And during that time did he have a store there or did 260 he work for some one else? A. He had a store there.

Q. And when he left did he turn the furniture over to you? A. He told me to take the furniture and sell it and come down home and give the money to his father and let him take things he knew about and dispose of them.

Q. Did he tell you where he was going? A. He said he may go to Washington or he may go around to Annapolis.

Q. And didn't he tell you at that time he was going to Washington or going to Annapolis for the purpose of seeking employment? A. Well, he left so hurriedly—he had indebtedness in Farmville—and wanted to get away and see what he could do elsewhere. I didn't want him to leave, because there was a good opening.

Q. But, as a matter of fact, presuming his statement to you to be true, he was in debt there? A. Yes.

Q. And the first letter you received from him after you and he separated at Farmville, you going to Richmond and he going to some other place, was from Annapolis? He was in Annapolis when he wrote to you? A. Yes; so far as my recollection goes.

Q. And, so far as your recollection goes, you received no letters from him from Washington or Baltimore? A. No, sir.

261 Q. And as I further understand you, you never spoke to him in person about his returning to you? A. No, sir; he never gave me an opportunity.

Q. And as you say, whenever you had a talk with him at any time the conversation was broken up or he never gave you an opportunity for you to express yourself? A. That is right.

Q. How long were you with him on this occasion in the Smithsonian grounds, to which you have referred? A. I don't suppose more than a quarter of an hour, if that long.

Q. Did your daughter and son go there with you? A. Yes, sir.

Q. And while you and he were talking or while the conversation was going on, were they standing there or had they moved off? A. No, sir. The children moved off and were playing around.

Q. And then he left you? A. Yes, sir.

Q. Whatever passed between you passed between you and Mr. Bergheimer, the children not being there? A. Yes, sir.

Q. And did you take a seat in the open there? A. Yes; we took

a seat in the park there on a bench, and the conversation was nothing but asking how I was and the children were and how they were growing; but to get into conversation with him I never have to this day.

262 Q. That, then, in substance is all the conversation you recollect? A. Yes.

Q. Do you remember how long you have been going to visit Mrs. McClelland in Washington, for how many years? A. I don't know how many years, but it is quite a good many years.

Q. It has been for ten or twelve years past? A. Yes.

Q. And outside of your visits to Mrs. McClelland's you always lived in Richmond? A. I always lived in Richmond.

Q. And you never had any residence anywhere else except a short stay in Farmville? A. That is all.

Q. Were you born here? A. Yes.

Q. On those occasions when you went to Washington did you yourself ever go to the jewelry store of Galt's, where Mr. Bergheimer was employed? A. No, sir.

Q. As I understand you, you said something about not going because you were afraid he would insult you or some unpleasantness take place? A. Yes; I thought it was his duty to take me down there and introduce me.

Q. Did he ever insult you? A. No, sir; but I would take 263 that for an insult, because I would not like to go to the place, not having been there before.

Q. As a matter of fact, you and he always got along together? There were no quarrels? A. Only staying out at nights.

Q. Because he stayed out late at night? A. Yes.

Q. Outside of that, as husband and wife you got along all right, did you not? A. Yes, sir.

Q. And that being so, why did you think if you went down to see him in a public store he would insult you? A. I just took that idea from myself.

Q. Then instead of going you sent either your little girl or little boy down? A. Yes.

Q. Do you remember when it was you first sent either your son or daughter there to see him—to say you wanted to see him? A. No, sir.

Q. In other words, about how long ago was it? A. When they were small children.

Q. Well, could you say that was ten or eleven years ago? A. About the time they went down to the Smithsonian.

Q. That has been stated by your boy to have been in 1891. Is that about your recollection of it? A. I think so.

264 Q. Now, prior to the time you sent either one of your children to see your husband, did you ever send anybody else to see him? A. To see him for me?

Q. Yes. A. No, sir; I sent him a note by a gentleman.

Q. A gentleman living in Washington? A. Yes, sir.

Q. Did that gentleman know what was in the note, or did he

simply carry it there? A. He carried it. He knew I wrote him a note, and he carried it as a favor.

Q. Do you remember when that was, taking the Smithsonian incident as a time to calculate from? Was this note sent by that gentleman before or after that? A. After that. The note was sent, I think, about three years ago.

Q. And, as I understand you, to these notes you sent him you never received any written reply? A. No, sir; none at all.

Q. On this occasion, when you speak of your daughter having spoken to her father, was that as church was leaving out or as you were going to church? A. As church was leaving out.

Q. What church was it? A. It was a Catholic church, but I don't remember the name of it.

265 Q. The Catholic church on 10th street—St. Patrick's church?

A. It was a Catholic church, but I don't remember the name of it.

Q. You know where Woodward & Lothrop's is? A. Yes.

Q. Was the church near there? A. It was the church on the other side.

Q. That is, to the east of Woodward & Lothrop's? A. I don't know how Washington is situated.

Q. You were stopping up on 10th street? A. Yes.

Q. Was not this church on the same street, near F? A. Yes; on this side of the street.

Q. It was a stone church, wasn't it? A. Yes; I was not there very often.

Q. Do you remember whether your daughter had sent for her father to meet her there, or was it merely a casual meeting? A. She saw him and asked him to meet her there.

Q. And when your daughter saw him there she had the conversation with him, and you did not have any conversation with him? A. No, sir; she walked in front, and my son and I walked in the back.

Q. Was this request made to him by you, to your husband to come that evening, or was it made to your daughter to ask him?

A. No; I asked him myself.

266 Q. Did he make any reply to it? A. He said he had a previous engagement for the evening and could not come.

Q. In your answer in this case, Mrs. Bergheimer, among other things, you stated that you were entitled to apply for a divorce from your husband, but refrained from doing so owing to conscientious reasons more than any other. That was because you belong to the Catholic church, was it not? A. I belong to the Catholic church, but I was not married by a Catholic priest.

Q. What were the conscientious reasons? A. I don't believe in divorce; I always thought too much of him.

Q. That is what you mean by conscientious reasons? A. Yes.

Q. But notwithstanding that fact you filed your cross-bill asking for the same relief he asks from you? A. Yes.

Q. When were the conscientious reasons removed so as to compel

you to file your cross-bill? A. After I saw the notice in the paper. I was informed through the paper.

Q. Yes; but you don't know he put anything in the paper about a divorce case? A. Yes, sir; he put it in the paper. It was by my friends telling me about it.

Q. Have you not the common knowledge that almost 267 everything in the papers of this kind are taken from the records? You don't mean to say that he caused the insertion to be made in the newspaper, do you? A. I don't know who should have done it otherwise; it was in the Times, and also in the Legal.

Q. But you haven't any personal knowledge that he had anything at all to do with it? A. No more than the paper says.

Q. Did the paper state that Mr. Bergheimer told them to put that matter in the paper? A. I should think from reading the paragraph it was his suggestion to put it in that way.

Q. You think that about him, do you? A. Yes, sir.

Q. But you haven't any personal knowledge upon which to base that conclusion, have you? A. No more than I saw it in the paper when I picked it up—where he put it in the paper. I have the clipping at home.

Q. And was it because you saw that in the paper that you determined to file a cross-bill—that is, an application on your own behalf to obtain a divorce for the reasons that he seeks to get a divorce from you? A. I thought as long as he entered that proceeding I would have to protect myself and children.

Q. You answered his bill, didn't you? You remember signing a paper wherein you denied certain things he charged against 268 you; you remember that? A. Yes, sir; I signed the papers Mr. Allan gave me.

Q. You signed just such papers as you read over and what you conceived to be the truth, didn't you? A. Yes, sir.

Q. Now, to go back a moment, was it when you saw this statement in the paper that your conscientious reasons for not applying for a divorce were removed? A. No, sir; I never intended to make any application for divorce; never in my life.

Q. But, as a matter of fact, you have applied for divorce? A. Just up to this time, in this proceeding.

Q. In these same proceedings? A. Yes, sir.

Q. Now, in your cross-bill you further state, Mrs. Bergheimer, that when Mr. Bergheimer left Farmville he left there "upon the pretence that he would go to seek employment and provide a place for her and send for her to join him." What reason have you for making that allegation in your cross-bill, that it was merely a pretence of his in making that statement to you? A. Because Henry never told me of his proceedings before that. He never really told me what he intended to do until a few hours before he left, and told me to take the things and dispose of them and go back home.

Q. The things you refer to are the furniture in the house? A.

Yes; I don't know what became of the other things.

269 Q. He did not take any of the household furniture at all with him, did he? A. No, sir.

Q. Now, is it your only reason for believing that was a pretence because he left hurriedly, statiug about this indebtedness? A. Well, he was so ashamed of his indebtedness and people were after him, and he told me to help him out of the debts.

Q. You haven't any reason to suppose it was a pretence, except the fact, as you say, he was in debt and left Farmville rather hurriedly? A. Yes, sir.

Q. Do you know when it was that he made this visit to your father's house when you say you were sick? A. When my daughter was a year and a half old.

Q. And your son was how old? A. He was very small.

Q. Your son is older than your daughter? A. About eighteen months difference.

Q. Was any one with you at the time Mr. Bergheimer called? A. Any one at my house?

Q. Yes. A. No sir; I was upstairs and he never came upstairs.

Q. When he called, nobody was there at the time in your room?

A. No, sir.

270 Q. Had you been sick then for some time? A. Yes, sir.

Q. And were you sick for some time afterwards? A. Yes, sir.

Q. When was it you first heard your husband had called; I mean how long after he left? A. I suppose about an hour or so; after I had gotten awake.

Q. Were you asleep at the time he called? A. Yes, sir.

Q. Had the doctor left any injunction about not waking you if anybody called while you were asleep? A. No, sir; only I had been resting much easier than I had been and they would not disturb me.

Q. Who told you your husband had called? A. My father and mother told me.

Q. Both of them? A. Yes, sir.

Q. Did they tell you he had seen the children? A. Yes, sir.

Q. Did they also tell you he called the next day, on the 4th of July, if the other visit was on the 3rd? A. I don't remember his coming on the 4th.

Q. Do you remember this first visit was on the 3rd, and that he came here on an excursion? Was that told you by any one? A. No, sir.

271 Q. At the time you left Farmville, did you know how much he was in debt? A. No, sir.

Q. Now, you spoke about his not attending to business and frolicking with men down there. Can you name me any of the men you refer to? A. No, sir; it was not any one I knew of.

Q. How do you know he was frolicking around? A. No more than I heard him speak of them, but I never heard of the names.

Q. Did he say he had been frolicking around with men? A. Yes.

Q. Did he mention the names of any? A. He may have mentioned them, but I have forgotten it.

Q. What did you understand him to mean by frolicking around with men? A. Gambling and dissipating.

Q. You knew he gambled occasionally, did you? A. Yes, sir.

Q. And you knew that when you and he were living in Richmond together? A. Yes, sir.

Q. And as a matter of fact you always—— A. I begged him often enough to stop it.

Q. But as a matter of fact you always knew where he was when he gambled? A. I guessed where he was.

Q. Didn't he tell you where he always went? A. He generally said he went to a certain place on 9th street. 272

Q. You knew that place? A. I knew where it was.

Q. How far was that from where you lived? A. That was 9th and Bank, and I was down on 15th.

Q. As I am not familiar with the streets here, how many squares was that from where you lived? A. About ten squares.

Q. Now, you spoke of one occasion when he came into the store where you were working here in Richmond. Do you remember how long ago that was? A. I think it was about ten years ago, so far as I can remember.

Q. Was he alone or with some one? A. He was alone.

Q. And what did you say took place at that time? A. He asked me what I was doing behind the counter, and I said I was making a living for myself and children.

Q. Did he come up to where you were? A. Yes; he came up and stood at the counter where I was, and I asked him how long he would remain in the city, so I could see him, and he said a few hours; and I followed him to the door and asked him how long he was going to stay, so I could see him, and he said he could not make any appointment.

Q. Did he state whether he had come into the store to see 273 you? A. Purposely to see me?

Q. Yes. A. No; he did not say that at all. He saw me standing at the door and walked in.

Q. Did he make any purchases in there? A. No, sir.

Q. Did he talk to anybody else besides you? A. No, sir; he was not acquainted with anybody else in the store.

Q. How long do you suppose you talked with him then? A. I don't suppose it was more than ten minutes, if that long.

Q. He was on one side of the counter and you on the other? A. Yes.

Q. Was that in the summer time, if you remember? A. I could not remember whether it was summer or not.

Q. The reason I ask you is you said you were standing at the door. Were you outside or inside? A. I was inside; the door was closed.

Q. And as he approached the store you stepped behind the counter? A. Yes.

Q. And the conversation was had just as you testified? A. Just as I testified.

Q. When you were talking to him on this occasion in the 274 Smithsonian grounds and started to say anything to him upon any subject, did he interrupt you? A. Yes, sir.

Q. In what way? A. He would turn the conversation off and say, "Talk about the children," who were playing or walking near, just in an off-hand way. I could not get a thing in conversation with him.

Q. From his conversation, did he appear to be interested in watching the children? A. No, sir; it was a kind of pretence. He seemed to be nervous all the time he was sitting there.

Q. Why do you say it was a kind of pretence? A. Because he was a kind of nervous and seemed to be afraid to talk to me.

Q. He consented to meet you? A. Yes; I went over there with my son and sent him to bring him over to meet me.

Q. He came across of his own volition? A. Yes, sir.

Q. That was the first time you had talked with him since you two have separated at Farmville, was it not? A. Yes, sir.

Q. Was there anything unusual in his being a little nervous? A. I don't know; I don't know what should have made him so.

Q. Well, did you walk with him back towards the store?

275 A. No, sir; I left the Smithsonian and walked to the car alone and got on the car, and he bid us good-bye and said he would see me again.

Q. He saw you again at church, didn't he, or was that before that? A. That was since; that was afterwards.

Q. You spoke about his having written to you demanding you to come. Do you remember exactly what language he used in asking you to come to Annapolis? A. No, sir; I don't remember the language at all.

Q. Something was asked as to whether or not your husband knew your financial condition, &c. So far as you know, whatever knowledge he got as to that he received through letters from you? A. Yes, sir.

Q. After your husband called at the house on this occasion when you were sick, did you write to him about his visit there, saying you were sick at the time and were sorry you were not able to see him? A. I don't think I did.

Q. When he was sick in Washington did you hear of it in any way? A. His cousin informed me of his sickness.

Q. Who was he? A. Mr. August Bergheimer.

Q. Were you in Washington at the time he was sick? A. He told me of the sickness and showed me several letters he had 276 gotten from the nurse; and I wrote to the firm and told them if I could be of any service I would come over and help nurse him; and after he commenced to get better I sent Honey over, and I know she could help him and make little delicacies and help him in that way. I had already gotten my ticket to go, but after I heard I would not be needed I stayed home.

Q. Whatever took place between your daughter and Mr. Bergheimer you learned from your daughter? A. Yes; I learned from her. She told me herself. I sent word every day to August to find out how he was getting along, because he heard from him direct.

Redirect examination.

By Mr. ALLAN:

Q. You said in cross-examination that after Mr. Bergheimer left you, after seeing you in the Smithsonian grounds, he said he would see you again. How long was it after that before he saw you again? A. I guess it was a couple of years before I saw him again.

Q. You have also testified that he demanded you to come to Annapolis, but that he never asked you to come. Please state what difference you understand there is between a demand and asking you to come. A. He might demand it, but that is not why I should come. There are two ways, demanding and asking.

Q. Do you consider there is a difference between asking 277 you to come and demanding? A. I would not go for the simple reason I had not the means to go with or pay my debts and leave town, and I did not know how I would go in the dark and find him, and I thought I had better stay here until a future time.

Q. Do you understand the word "demand" to mean the exact same as the word "ask"? A. Demand seems to be more abrupt. He could apply a word a great deal better than demand.

Q. Do you remember ever sending your daughter to see him on more than one occasion? A. Yes, sir.

Q. Do you know how many times you sent her to see him?

Mr. FORREST: Objected to as immaterial, because while the witness may testify she sent her daughter, she has no way of knowing whether the daughter, as a matter of fact, called unless she was present.

Q. I only asked for the number of times you sent her. A. When she was in Washington she always went two or three times, according to the length of time she stayed there. She would go around there once or twice always before she left. She would go before she left and tell him to come. Whenever she went to Washington I always impressed it on their minds to call on him several times. I always impressed it on their minds to do it.

Q. I understood you to say you bought a ticket to go to 278 Washington when you heard your husband was sick? A. Yes; I had a written pass.

Q. Did you get any reply to your letter there? A. I got a reply from one of the Galts saying it was not necessary, that he had a trained nurse to wait on him. I don't know which it was.

Recross-examination.

By Mr. FORREST:

Q. You say you got a reply from one of the Galts? A. Yes.

Q. You wrote a letter to the Galts asking him about his condition? A. Yes.

Q. And they replied to it? A. Yes, sir.

Q. Now, upon this question of demand, did your husband write to you, "I demand you shall come"? or words in that way, or merely say, "I want you to come to Annapolis," or do you remember what language he did use? A. I remember his saying, "I demand it."

Q. How did he say it? A. I don't remember the words he used.

Q. Did he say, "My dear wife, I hereby demand that you come to Annapolis"? A. No, sir; I don't think he worded it as affectionately as that.

Q. Did he say, in whatever way he may have addressed 279 you, "I demand you come to Annapolis"? A. Yes; and, so far as I remember, he would not be bulldozed by me any more, or words to that effect. I don't remember the words.

Q. But you are certain he used the word demand? A. Yes, sir.

Q. He didn't ask you at all to come? A. No, sir; he demanded.

Q. What else did he say, so long as you remember the word "demand"? A. I cannot remember the contents of the letter.

Q. Do you remember he asked you to come, and told you he made arrangements for you and the children at a boarding-house? A. No, sir.

Q. He didn't tell you that at all? A. No, sir.

Q. Did he say anything further about your coming except to demand you should come? A. No, sir; he said nothing at all.

Q. At what time did your daughter start to school—how old was she? A. I don't know what age I sent her to school.

Q. Was she six or seven when she went to school? A. I judge she was about going on eight; I don't remember.

Q. And down to what age did she continue at school? A. Till about fourteen.

280 Q. Did she go to school in Richmond? A. Yes, sir.

Q. And school began about what time? A. What do you mean—in the morning?

Q. What month. A. It generally opened about the 15th of September.

Q. And continued till what time? A. Till June. I think the school closed in June.

Q. And they had school every day in the week except Saturdays and Sundays? A. Yes, sir.

Mr. FORREST: The complainant, through his solicitor, objects to all the testimony given by this witness, and to the competency of the witness to testify, on the ground that she is the wife of the complainant. Under the law in force in the District of Columbia she is an incompetent witness, and at or before the hearing a motion will be made to strike out or suppress the deposition for the reason stated.

LOUISA R. BERGHEIMER,
By JOHN A. SWEENEY,
Examiner in Chancery.

130 HENRY C. BERGHEIMER VS. LOUISE R. BERGHEIMER AND

281 In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
vs. }
LOUISA R. BERGHEIMER, Defendant. } Equity. No. 20447.

DISTRICT OF COLUMBIA, ss:

I, John A. Sweeney, an examiner in chancery of this court, do hereby certify that, pursuant to order of court appointing me herein to take testimony, the foregoing depositions of Daniel O'Donnell, Daniel P. Bergheimer, Adelaide L. Bergheimer, Ludie O'Donnell, and Louisa R. Bergheimer were taken down by me, in the presence of and from the oral statements of the said witnesses, in shorthand, by agreement of counsel, and after the same were reduced to typewriting they were signed by me for the said witnesses, who were theretofore duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties hereto or in any manner interested in the result hereof.

JOHN A. SWEENEY,
Examiner in Chancery.

282 *Testimony on Behalf of Complainant in Rebuttal.*

Filed Dec. 26, 1899.

In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER }
vs. }
LOUISE R. BERGHEIMER. } Equity. No. 20447.

Testimony on behalf complainant in rebuttal.

WEDNESDAY, December 20th, 1899—4 o'clock p. m.

Met, pursuant to agreement of counsel, at the office of solicitor for complainant, in the Equity building, No. 317-19 4½ street N. W., Washington, D. C., on Wednesday, December 20th, 1899, at 4 o'clock p. m., for the purpose of taking testimony on behalf of complainant in above-entitled cause.

Present: Mr. Forrest, on behalf of complainant, and Mr. Millan, on behalf of respondent.

Whereupon ATUSSA A. CROSS, a witness produced on behalf of complainant in rebuttal, and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. FORREST:

Q. Where do you reside? A. 513 C street S. E.

283 Q. In this city? A. Yes, sir.

Q. What occupation or business do you follow? A. I am a nurse.

Q. How long have you been a nurse? A. About twenty-five years.

Q. And during that time or any part of that time have you followed the vocation of a nurse in this city? A. Yes, sir; for the last ten years I have nursed in this city.

Q. Do you know Henry C. Bergheimer, the complainant in this suit? A. I do.

Q. In a professional capacity as nurse, have you ever assisted him? A. I did.

Q. Do you remember when that was? A. I think it was in 1896 or '7. I guess it was March, 1897.

Q. Where was he living at that time? A. At 127 F street N.W.

Q. In this city? A. Yes, sir.

Q. What was the matter with him at that time? A. He had typhoid fever.

Q. Do you remember how long he was sick? A. I think 284 between six and seven weeks; six or seven; five or six, I guess.

Q. To what extent was he sick? I mean by that was he very sick? A. Yes; he was very ill. He was delirious part of the time.

Q. And during the time he was sick do you remember a young gentleman calling there to see him, who represented himself as the son of Mr. Bergheimer? A. Yes, sir; he came one day and I answered the door. He gave me his card; and of course, I did not give Mr. Bergheimer any mail or anything at all. I did not give him any mail, or anything that might be left for him I did not let him have because it was against the doctor's orders.

Q. Did you have a conversation with this young man? A. Yes, sir; I had.

Q. What did he say to you at that time?

Mr. MILLAN: Objected to as not proper rebuttal testimony, and as immaterial and incompetent.

A. Well, he asked to see his father, he said on important business, and I told him he could not see him; and he insisted, and I told him it was positively against my wishes and the doctor's orders, and he could not see him. Of course, I did not let him see him.

Mr. MILLAN: I also object to the answer of the witness on the ground that it is a statement made by a third party and out of the presence of the parties to this suit.

285 Mr. FORREST: Solicitor for the complainant says that this testimony is offered in rebuttal of the testimony of the son offered in this cause.

Q. In his examination in this cause, Miss Cross, he has testified you said to him, "If you will give me your card I will take it up"? A. No; he gave me his card. I did not know who the young man was or anything about him and he gave me his card.

Q. At that time did you say to him if he gave you his card you would take it up? A. No, sir; he gave me his card, and I said the

gentleman could not have it; the gentleman could not have anything at all, any mail or anything else.

Q. Did you carry his card up and then come back and tell him it was impossible for him to see his father? A. I carried the card to Mrs. Kaiser and gave it to her, so she might give it to him when he got well.

Q. But my question was, After he gave you his card did you carry it up and then come back and state to him it was impossible for him to see his father? A. Yes; I said it was impossible for him to see him.

Q. Did you carry the card up to his father? A. No; I carried — to Miss Kaiser. I did not give it to his father, and he never knew I had it.

Q. At that time did he ask anything about his father's condition?

A. No, sir; he didn't ask anything about it, only he asked 286 to see him on important business. He said he wanted to see him on important business.

Q. At that time did you tell him who Mr. Bergheimer's physician was? A. Yes.

Q. Do you remember his calling at any other time after this visit you referred to? A. Yes; he called again after that.

Q. Did you see him? A. Yes, sir.

Q. At this second visit he has testified, "I went again the next morning to inquire how he was." Did he make any inquiry the next time he called as to how his father was? A. I think he did the second time he called. I think the second time he called he asked how he was and if he could see him, and I told him his father was not any better and he could not see him, and I think it was the second visit that he insisted on seeing him. He said he had to take the 5 o'clock train to go home that evening; but I would not let him see him, and he came back again that night at 7 o'clock and again insisted on seeing him.

Q. What did you say to him then? A. I would not let him see him. I told him he could not be seen.

Q. And were you at this time as nurse acting under the instructions of the doctor? A. Yes, sir.

287 Q. Were you at Mr. Bergheimer's place of residence when a young lady, said to be his daughter, called? A. No, sir; I was not there.

Q. At the time that his son called on these two visits you mentioned where was Mr. Bergheimer? A. He was in the second-store front room.

Q. Was he confined to his bed? A. He was.

Q. Now, in respect to when he was taken sick, when was that? In other words, how long had he been sick when his son called? A. I don't just remember. I guess he had been sick, perhaps, a couple of weeks. I don't just remember when he called.

Q. How long had you been there as nurse when he called? A. I think I had been there about three days before I went to nurse him, and I guess I had been there about three weeks, maybe; I don't just remember about that—how long it was.

Q. Did his son state what the business was he wanted to see his father on? A. No, sir; it was always on important business, sir.

Cross-examination.

By Mr. MILLAN:

Q. Miss Cross, when you carried the card to Miss Kaiser, did you tell the young man to whom you had carried it? A. No, sir.

Q. You simply carried the card up and came back and told him he could not see his father? A. I know I told him he could not see him.

288 Q. Do you know in what part of the house Miss Kaiser was? A. She was on the second-story back room, I think.

ATUSSA A. CROSS,
By JOHN A. SWEENEY,
Examiner in Chancery.

289 At the same time and place also appeared EMMA KAISER, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination:

By Mr. FORREST:

Q. Please state your residence. A. 153 F street N. E., in this city.

Q. Miss Kaiser, do you know the complainant, Henry C. Bergheimer? A. I do.

Q. How long have you known him? A. I have known Mr. Bergheimer, I think, for sixteen, seventeen, or eighteen years.

Q. Do you know when he first came to live at the house on F street near 2nd? A. Yes, sir; I do.

Q. When was it? A. It was quite a while ago. About fourteen years ago.

Q. And during the time he was living there did you live at the house? A. I did.

Q. And for how long a time? A. I lived there until the last three years.

Q. And besides Mr. Bergheimer and yourself, who else was 290 living there? A. My parents—father and mother—and brother.

Q. And you say you moved away from there about three years ago? A. Yes; I left there after my mother died and went with my sister.

Q. Were you living there at the time it was said Mr. Bergheimer was sick? A. Yes, sir; I was there.

Q. Do you remember what year it was? A. I think it was 1897, in March, that he was sick. I think it was 1897.

Q. And while Mr. Bergheimer was sick, do you remember any occasion when a young lady called there, said to be a daughter of

Mr. Bergheimer? A. No, sir; she did not call during Mr. Bergheimer's sickness. Mr. Bergheimer was up.

Q. How long had he been up? A. Just a few days.

Q. And where was he at the time this young lady called? A. In his room.

Q. And that was where? A. Up on the second story, front room where he had been sick.

Q. When she called, who met her at the door? A. I met her at the door.

Q. When you met her at the door, what was the first thing, if anything, she said to you? A. She asked me if Mr. 291 Bergheimer was in. The way it happened Mr. Bergheimer was out; I think it was the first or second occasion that he had been out, but I cannot remember which. He was very sick and felt very badly and weak and seemed to be somewhat exhausted. I asked him how he felt and he said, "I feel very weak and I want to go to my room for a rest, and if anybody calls to see me, no matter who, tell them I am out; tell them I am not at home." Then Mr. Bergheimer went to his room, and that is the last I saw of him. After a while the bell rung and I answered the bell, and it was his daughter, but I did not know who she was; and she asked if Mr. Bergheimer was in. I told her no. She said, well, she intended to see Mr. Bergheimer and that he was in, and I said Mr. Bergheimer was not in.

Mr. MILLAN: I object to this statement on the part of the witness as not proper rebuttal and as being a statement of a third party, made out of the presence of the defendant in this suit.

Mr. FORREST: Solicitor for the complainant, in answer to the objection, states that it is in answer to the testimony of the witness, the daughter of the complainant.

The WITNESS (continuing): And I said he was not in, and she said she would sit there and she would remain there until she did see him, but I told her he was not in. Of course, I could not be detained, as I had other business to attend to, and I said to please step in the parlor and I would see if he was in, because she created such a scene around there, and as I went to his room—no, she called 292 out first she would see him. She yelled out, Father or pa; I don't know what she hollowed. So then I said, Step in the parlor and I will see if he is in, and I went then and I met him half way. He had heard the noise downstairs and the screaming, and I told him there was a lady there who said she was his daughter and wanted to see him. Then he came down, and immediately he says, "I want to tell you I don't want anything to do with you—your brother or any of you—any more, since the way you carried on during my sickness," and he repeated that to her several times—that he did not wish anything to do with either her or her brother or any of them since the way they carried on during his sickness. That was all he said to his daughter.

Mr. MILLAN: I object to this last part of the answer of the witness, because no proper foundation has been laid for it, and is not responsive to any question that has been asked any witness for the defendant..

Q. Did he—that is, the complainant—at that interview with his daughter, say that she, his daughter, could tell her mother and all the rest of them to go to hell ; that he did not give a damn for them ?
A. No, sir ; Mr. Bergheimer made use of no such words whatever. All he said was, just shaking his hand (indicating), "I don't want anything to do with you or your brother or any of them—and you can go and tell them so—since the way you acted in my
293 sickness." That is all Mr. Bergheimer said.

Q. She further testified that when he came downstairs that she went up to him and put her arms around his neck, and that he pushed her away and made this remark I mentioned. A. He did nothing of the kind. He did not touch her, and she did not touch him.

Q. She further testified that Mr. Bergheimer told this woman to shut the door, and that he took her by the arm and demanded of her to shut the door in her face. What have you to say about that ?
A. He did not touch her, but she kept up that scene and carried on so he said, Shut the door or close the door ; and I said, No, and I did not close the door until she got on the sidewalk, and then I closed the door ; but he did not touch his daughter, nor did he say such words to her. He did not put his hands on her.

Q. She further testified that you came up and put your arm on him—that is, Mr. Bergheimer—and said " You are too weak to stand this," and led him back to his room ? A. I did nothing of the kind. I said, I am very sorry that this has happened, because it is enough to make you sick ; and I was standing about the distance from this gentleman in the chair here to him.

Q. About how far is that ? A. I don't know ; that would be from my front door to the parlor.

294 Q. State how many feet that is. A. About two or three feet.

Q. Do you remember of any other occasions when this lady, said to be his daughter, called during his sickness ? A. No, sir ; she did not say who she was until she began to call out his name.

Q. Something has been said about his son calling there. Were you present on any occasion when his son called ? A. I was ; I was there on two occasions when he called. He came and said he wanted to see him on particular business ; very important business.

Q. And on either one of these occasions while you were present, did he make any inquiry as to the condition of his father ? A. No ; he would say, " How is Mr. Bergheimer ? " He would ask that, and when I would tell him he was too sick to be seen, he would say, " I have got to see him ; it is on important business, and I must see him." And I told him, " You cannot see him ; he has typhoid fever and cannot see anybody." And he said, " I understand all

that, but I must see him ; I must see him on business." And that is all he ever came to see him about, on very important business.

Q. As a matter of fact, did he see him on either of these occasions? A. No ; he did not see him.

Cross-examination.

By Mr. MILLAN:

Q. When was the last time you saw Mr. Bergheimer? A. 295 I saw Mr. Bergheimer last Sunday.

Q. When was the last time before that? A. I don't remember.

Q. Is he still residing at this house where you formerly lived on F street? A. Yes ; he is at 127 F street N. W.

Q. How long after his sickness was it you left his house? A. I left there about eight months after he had been sick.

Q. And that sickness, as you recollect, was in March, 1897? A. 1896 or '97, I don't know which, but he was ill a long time before he was taken sick.

Q. On these two occasions when the young man, said to be his son, called at the house where he was living, who met him at the door? A. I met him.

Q. Then Miss Cross did not meet him? A. Yes ; she met him on other occasions.

Q. How many times was he there? A. He was there four or five times ; four times at least.

Q. Can you give the length of time, approximately, covering those visits ; were they within a day or two, or how was it? 296 A. No ; about a week, and sometimes three days or a week or like that.

Q. To the best of your recollection, how many times did you meet him at the door when he called? A. Only twice.

Q. And how far apart were those occasions? A. Well, I don't remember how far apart they were.

Q. About how far—three days or a week? A. I don't remember ; I could not say. No more than three days, but I don't remember how long apart they were.

Q. Was Miss Cross present on either of the occasions? A. On one occasion she was. She stepped forward because he made himself quite noisy and insisted upon seeing his father. Miss Cross stepped up and she told him he really could not see him, and that she was his nurse and she was instructed by the doctor that no one should see him.

Q. Did Miss Cross come down from the sick room upon that occasion? A. She came down from the sick room.

Q. On this occasion when the daughter called after Mr. Bergheimer was up, you met her at the door first? A. I met her ; yes, sir.

Q. Did you tell her that Mr. Bergheimer was not in? A. Yes ; because he requested so, because he was very weak and tired.

297 Q. She informed you she was his daughter? A. I didn't know she was his daughter until she hollered papa or pa. She screamed papa or pa, and then I knew she was his daughter.

Q. You were aware of the fact he was in? A. I knew that he was in because he requested me to say that he was not in. He had been out and was tired. It was his first or second time out, and he said he did not want to see anybody, because he was so weak.

Q. You told her he was not in and she immediately requested to see him? A. She insisted he was in and would see him, and I insisted he was not, and she kept up a noise and said she would not leave until she saw him, if it was nine o'clock at night. Then she called out papa or father, and I said he was not in, and then she said, "I will stay until he comes," and then I said, "Will you step in the parlor until I see?" and then he heard the noise and he came down to the door.

Q. And then you stated, in your direct testimony, that after he came down she kept on screaming and raised a scene? A. She was calling him papa, and he told her, "All I have to say is I don't want anything to do with you or your brother or any of them, since the way you acted during my sickness."

Q. What did she say in response to that? A. I don't know what she said. I don't know anything she said.

298 Q. When she was giving these screams, what was she saying? A. She would say papa or pa, or something of that kind. It was papa or pa; I don't remember.

Q. But I remember your testimony as being this, that after he came downstairs and was there talking to her she kept on screaming. A. She did not keep on screaming while he was there. She kept on crying, and Mr. Bergheimer said he did not wish to have anything to do with her any more, and she might go home and tell her mother so.

Q. What did she say? A. She didn't say anything, but he said, "I don't want anything to do with you or your brother or any of you, since the way you acted during my sickness."

Q. She was more or less distressed at that rebuff? A. He was polite to her, but he said he did not wish to have anything more to do with her, since she acted that way during his sickness.

Q. That was your idea of politeness, for him to tell his daughter he did not want to have anything more to do with her? A. I don't think it was politeness. He was not cross to her, but he said he did not wish to have anything to say to her or her brother or any of them, since the way they carried on during his sickness.

Q. You say she did not appear to be distressed? A. Yes; she was worried, and she was very much excited.

Q. Did she weep? A. She cried.

299 Q. That is what you mean by saying she kept on screaming? A. Yes; she was screaming, and she kept hollering up to him, and I told her Mr. Bergheimer was not in, but I was polite to her and I told her Mr. Bergheimer was not in.

Q. But I am talking about this scene after he came down. There was no reason why she should be hollering for her father after he came down? A. Of course, she did not holler for papa after he came down.

Q. What did she say? A. She wanted to speak to him, and he said he didn't want anything to say to her or her brother or none of them any more, since the way they acted.

Q. Then she was distressed and wept? A. I don't think she wept, exactly.

Q. What did she do? A. She just stood there, and he said, Go, and she started for the vestibule and she said—I don't know what she said, just crying.

Q. You said she kept up a scene? A. Yes; she kept up a scene.

Q. This has been about three years ago at least, or possibly four? A. No; it will be three years this March, coming.

Q. You made no notes of this transaction, of course? A. No, sir; I made no notes at all.

300 Q. And of course you are depending now upon your unaided recollection of what occurred? A. I just recollect what occurred.

Q. You don't pretend to recollect all the conversation? A. What I recollect I will say.

Q. I haven't any doubt of that, but I say you don't pretend to recollect all that was said? A. No; I could not recollect all that was said. It would be impossible.

Q. Now, do you wish to be understood here, Miss Kaiser, as testifying that up to the time this young lady called out papa or father, whichever it was, that you had no idea who she was. A. I had no idea who she was. I had never seen the lady in my life.

Q. You had no suspicion she was a member of Mr. Bergheimer's family? A. No, sir; I had not the slightest idea.

Q. Did you know he had a daughter about that age? A. I knew he had a daughter, but I didn't know what age his daughter was.

Q. Did she tell you why she wanted to see him? A. No; on particular business she wanted to see him.

Q. You repeated to her, I believe, several times that he was not in? A. Yes; that he was not in.

Q. Even after she told you she was his daughter? A. 301 When I said he was not in, she called out papa or pa, and then I said, "Step in the parlor and I will see if he is in," and I met him half way, coming down.

Q. He was then on the way down? A. He was then on the way down. He had heard her calling.

Q. Mr. Bergheimer boarded there in your father's family, was it? A. Yes.

Q. For quite a long number of years? A. Yes; for quite a long number of years.

Q. He is a very good friend of the family? A. Well, he was a good friend of the family.

Q. You have still kept up your friendship for him since you

moved from there? A. Yes; he was always a very nice gentleman, and we always kept up our friendship for him.

Q. You see him quite often? A. No, sir; I don't see him often.

Q. On this day, when this scene that you have described took place, Mr. Bergheimer had been up and out of the house? A. He had been out and he came back, as I told you. He was very weak, and he said he wanted to go to his room to rest, and if anybody wanted to see him to say he was not in.

Q. Was that the first day he was out? A. That was the first or second time; I don't remember which.

Q. Do you remember the young lady telling you if you did 302 not let her see him she would go up to his room? A. She did not say that. She said if she knew where his room was she would show me how quickly she would go there.

Q. Is it not a fact that she did tell you that if you did not allow her to see him she would go to his room, and that it was in response to that threat that you then said you would see if he was in? A. No, sir.

Q. Were you present at the entire interview between him and his daughter? A. I was there.

Q. About how long was she in the house altogether? A. I don't remember how long; not very long.

Q. Approximately, as near as you can come to it? A. Well, I don't know.

Q. Was it five or ten or fifteen minutes or half an hour? A. Oh, no; it was not half an hour. He was in his room. I don't remember; I could not say how long.

Q. Was it nearer ten minutes or nearer half an hour? A. It was nearer ten minutes than half an hour. Perhaps it was ten minutes.

Q. Was it not considerably less than ten minutes? A. No; she was there perhaps ten minutes.

Q. That is, including the time before Mr. Bergheimer came down and after he came down you think was ten minutes altogether?

A. Fully, yes.

303 Q. After he came down how long was she there? A. Not very long after that.

Q. Five minutes? A. It might have been; I don't know.

Q. It was no more than five minutes? A. It may have been. I don't remember. Perhaps it was five minutes.

Q. You think it was not more than five minutes? A. Well, I don't know. I don't remember. I could not say exactly.

Q. Who shut the door when she went out? A. I shut the door after she was down on the sidewalk.

Q. Did anybody tell you to shut the door? A. Mr. Bergheimer told me to close the door, but I would not shut the door until after she got on the sidewalk.

Q. You are sure he did not touch her or she touch him? A. No, sir; he did not touch her and she did not touch him. Mr. Bergheimer did not put his hands near his daughter.

Q. Did he push her? A. No, sir; he did not push her. He did not put his hands on her at all.

Q. She did not touch him or make any demonstration towards him? A. I don't remember. If she did I don't remember it, but I know Mr. Bergheimer did not put his hands on the girl.

304 Q. According to your recollection, the first thing he said when he came down was to tell her the fact that he did not want to have anything to do with her? A. He said to her, "I don't want anything to do with you. I don't want anything to say to you or your brother or any of you from the way you acted during my sickness."

Q. Was that the first thing he said? A. That was what he said when he came down.

Q. Did he accompany that with a motion of his hand? A. No. He simply said, "I don't want anything to say to you." He seemed to be excited. He said, "I don't want anything to say to you or your brother or any of you, and I don't want anything to do with you or any of you since the way you acted during my sickness." That is all he said. He did not touch her in any way.

Q. But my question was, Did he accompany that with a motion of his hands, as though he would rebuff her? A. No; he did not do anything of the kind that I saw.

Q. Why did Mr. Bergheimer tell you to shut the door? A. Because she was raising such a scene and crying and carrying on, and he told me to close the door after she was out.

Q. After she was out? A. Well, she was in the doorway.

Q. He said— A. He simply said, Go close the door, as she was raising a scene.

Q. The object was to close the door and prevent her re-entering? A. She had gone out and was standing on the porch. He said, "Close the door;" but I did not close the door until she was down on the pavement.

Q. According to your understanding of the case, what was the object of telling you to close the door? A. Because she was standing there, crying and raising a scene, and he told me to shut the door.

Q. He wanted to shut her out? A. I don't suppose he wanted to shut her out, but he didn't want to have that scene continue.

Q. And he said, "Close the door"? A. He said to close the door. That is all.

Redirect examination.

By Mr. FORREST:

Q. Do you remember how long it was after this visit of his daughter to the house before Mr. Bergheimer resumed his duties at Galt's store?

Mr. MILLAN: Objected to as immaterial and irrelevant.

A I don't remember.

Q. Do you remember whether it was a matter of days or weeks?
 A. I really don't remember that.

Mr. MILLAN: Same objection.

Q. You may state whether or not there are houses on both sides of the house where Mr. Bergheimer was living at that time.
 306 A. Yes, sir; there are houses on both sides of it.

Q. And do you remember what time of year it was when this visit of his daughter was made there? A. Yes; it was in April.

Q. The fore part or the latter part? A. I guess it was the fore part of April; right after Mr. Bergheimer's sickness.

EMMA KAISER,
 By JOHN A. SWEENEY,
Examiner in Chancery.

Whereupon an adjournment was taken, to meet subject to agreement of counsel.

Mr. FORREST: I announce the testimony in rebuttal closed.

307 In the Supreme Court of the District of Columbia.

HENRY C. BERGHEIMER, Complainant, }
 vs. } Equity. No. 20447.
 LOUISE R. BERGHEIMER, Defendant. }

DISTRICT OF COLUMBIA, ss:

I, John A. Sweeney, an examiner in chancery of this court, do hereby certify that the foregoing depositions of Atussa A. Cross and Emma Kaiser were taken down by me in the presence of and from the oral statements of the said witnesses at the time and place designated in the caption thereof, and after the same were reduced to typewriting they were signed by me for the said witnesses by agreement of counsel, the said witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties hereto or in any manner interested in the result hereof.

JOHN A. SWEENEY,
Examiner in Chancery.

308 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
 District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 307, inclusive, to be a true and correct transcript of the record, as per directions to clerk filed herein, copy of which is made a part of this transcript, in cause No. 20447, equity, wherein Henry C. Berg-

heimer is complainant and Louise R. Bergheimer is defendant in the original bill, and wherein Louise R. Bergheimer is complainant and Henry C. Bergheimer is defendant in the cross-bill, as the same remain- upon the files and of record in said court.

In testimony whereof I hereunto sub-
Seal Supreme Court scribe my name and affix the seal of said
of the District of court, at the city of Washington, in said
Columbia. District, the 28th day of April, A. D. 1900.

JOHN R. YOUNG, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 989. Henry C. Bergheimer, appellant, vs. Louise R. Bergheimer. Filed April 30, 1900. And No. 990. Louise R. Bergheimer, appellant, vs. Henry C. Bergheimer. Filed May 2, 1900.

